



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Commissioner Matti Bower, Chairperson
Commissioner Luis R. Garcia, Jr., Chairperson

Members of the Ad Hoc Condominium Reform Taskforce

Alex Annunziato – Appointed by Commissioner Matti Bower
Nina Baliga – Appointed by Commissioner Luis R. Garcia, Jr.
Frank Del Vecchio – Appointed by Vice-Mayor Richard Steinberg
Joe Fontana – Appointed by Commissioner Saul Gross
Michael C. Gongora – Appointed by Vice-Mayor Richard Steinberg
Calvin Kohli – Appointed by Commissioner Saul Gross
Luis Maseda – Appointed by Commissioner Jerry Libbin
Milli Membiela – Appointed by Commissioner Simon Cruz
Barbara Montero – Appointed by Commissioner Jerry Libbin
Maria Elena Negrin – Appointed by Commissioner Luis R. Garcia, Jr.
Rocio Sullivan – Appointed by Commissioner Simon Cruz
Stevan M. Zaiman – Appointed by Commissioner Matti Bower
Morris Sunshine- Appointed by Mayor David Dermer
Justo Gomez- Appointed by Mayor David Dermer

FROM: City Manager, Jorge M. Gonzalez

DATE: February 15, 2006

SUBJECT: Meeting of the Ad Hoc Condominium Reform Taskforce

A meeting of the Ad Hoc Condominium Reform Taskforce has been scheduled for February 21, 2006 at 6:00PM in the City Manager's Large Conference Room.

AGENDA

- ITEM ONE:** Minutes of the February 7, 2006 Ad Hoc Condo Reform Taskforce
- ITEM TWO:** Florida Statute Chapter 718.616 (checklist) including 20 year recertification
- ITEM THREE:** Existing sections of the City Code licensing and/or occupancy requirements in the City Code for condominiums – City Attorney's Office
- ITEM FOUR:** Submitted/pending legislation at State level of licensure of condo management companies – Kevin Crowder, Economic Development
- ITEM FIVE:** City Attorney's Memorandum dated January 23, 2006; #4 (Urge the Legislature to Strengthen the Condo Act) items (a) – (f)

ITEM SIX: Oral Report by the City Attorney's Office regarding conflicts of interest

ITEM SEVEN: Presentation by Guest Speaker- Open

JMG/TH/dm

F:\cmgr\B\ALL\LUPITA\CONDO REFORM TASKFORCE\02212006 Agenda.doc

MINUTES OF THE FEBRUARY 7, 2006 AD HOC CONDO REFORM TASKFORCE

**I
T
E
M

O
N
E**



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor David Dermer and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: March 8, 2006

SUBJECT: **REPORT OF THE ADHOC CONDOMINIUM REFORM TASKFORCE MEETING OF FEBRUARY 7, 2006**

The first meeting of the Adhoc Condominium Reform Taskforce was held on Tuesday, February 7, 2006. **The attendees were as follows:** Taskforce members Commissioner Matti Herrera Bower, Commissioner Luis R. Garcia, Jr., Nina Baliga, Frank Del Vecchio, Joe Fontana, Michael C. Gongora, Calvin Kohli, Luis Maseda, Milli Membiela, Barbara Montero, Maria Elena Negrin, Rocio Sullivan and Stevan M. Zaiman

Absent: Alex Annunziato

City Staff: Tim Hemstreet, Assistant City Manager; Dolores M. Mejia, Special Projects Administrator; Debbie Turner and Jean Olin, City Attorney's Office

Commissioner Garcia welcomed all the Taskforce members and opened the meeting. Taskforce is a result of what is going on in the City as far as condominium closings, complaints on how associations are holding meeting, and a plethora of other complaints. Envisions this as a way to provide a forum to discuss problems and find solutions whether at our level of government or in Tallahassee. Goal is to identify and codify the goals the Taskforce. Taskforce members introduced themselves including community affiliation and who they were appointed by.

ITEM ONE:

Sunshine Law/Public Records/Ethics Rules for Taskforce Compliance – presented by Legal Department

Sunshine Law/Lobbyist Registration/ Public Records Law/Ethic Issues/Robert's Rules of Order reviewed by Jean Olin and Debbie Turner of the City Attorney's Office.

Taskforce composed of 16 members; 9 members are required for quorum; 5 votes form a majority. Members can meet, but they must honor the Sunshine Law.

Commissioner Garcia requested to have a lobbyist registration booth at the next meeting. Commissioner Garcia stated that it's unfair to make residents come to register at City Hall in the middle of the day. Jean Olin to forward request to the City Clerk's Office.

ITEM TWO:

Legal Review – presented by Legal Department

Tim Hemstreet requested that the Taskforce members provide the Administration with guidance/resolution of the Taskforce's official goal/ purpose, how the Taskforce would like to operate, , what the procedure is going to be for submitting agenda items, what support will

Commission Memorandum
Minutes of the 2/7/06 Adhoc Condominium Reform Taskforce Meeting
March 8, 2006
Page 2 of 4

the taskforce require, etc. To the extent that the Taskforce members can do their own leg work, the members should since staff has other day-to-day activities. As far as agendas, minutes, etc. staff will provide all support necessary for the Taskforce.

Joe Fontana asked the City Attorney's Office for an opinion as to the role of the Commissioners on the Taskforce. Debbie Turner stated that this is an ad-hoc committee, where the Mayor appointed 2 Commissioners as co-chairs the committee as voting members.

Commissioner Garcia stated that the Taskforce needs to create a mission statement in order to give direction. The mission of the Taskforce should be to identify problems that we have, go forward with identifying solutions, and refer these to whoever has the ability to address them, be it at the local or state level.

Frank Del Vecchio stated that he has reviewed the Commission After-Action, and that the mission for the Taskforce has already been set forth by the Commission. He stated that there were currently 7 items on the checklist that the Taskforce should address, and that everyone should turn their attention to the memo from the City Attorney, which was Item #2 on the Taskforce's agenda. Checklist items 1-4 are directly from the City Commission. Items 5-7 have been added by the City Attorney's Office (page 3 in Item #2). This should be used as the general guidance for the mission of the Taskforce, and if other items arose through discussion then the Taskforce could add them in subsequent meeting agendas.

Debbie Turner stated that the Mayor has created the Committee under the City Code, and named the Commissioners Co-Chairs. If there is a desire to change this, the change needs to be made by the Mayor. Commissioner Bower requested that the Taskforce give their sentiment on having the Commissioners as co-chairs. By show of hands, consensus was to leave the Commissioners as co-chairs.

ITEM THREE:

Materials submitted by Taskforce Member – Nina Baliga

Joe Fontana requested Legal Opinion if there is a conflict in Nina Baliga serving on board? Who paid for agenda materials/who paid for poll?

Nina Baliga responded that the poll was paid for by SEIU.

Joe Fontana stated – Should not have unions as board members?

Jean Olin – board members cannot lobby other members; prohibitions in County Code, board members cannot make a presentation on behalf of an entity they have a contractual relationship with. Under County Code, for purposes of issues being advocated by Union, board member cannot advocate, vote or participate on these issues. She cannot advocate on any issues.

City Attorney's Office to review whether Nina Baliga, a union employee, has a conflict of interest by serving on Taskforce, and report at the next meeting.

Commissioner Garcia – Every meeting the Taskforce should invite speaker; make this a standing agenda item. Invite Ombudsman for condos to come to Taskforce to make a presentation. Julio Robaina also to be invited – request from Morris Sunshine.

Review of items for the next agenda:

1. Florida Statute Chapter 718.616 (checklist) and include 20 year recertification
2. Existing sections of the City Code licensing/occupancy requirements in the City Code for condos and placed on next agenda
3. Submitted/pending legislation at State level of licensure of condo management companies
4. Include #4 (Urge the Legislature to Strengthen the Condo Act) items (a) – (f)

ITEM FOUR:

Scheduling of future meetings – presented by Tim Hemstreet, Assistant City Manager

Member Milli Membiela stated that due to the Legislature's schedule, meeting twice a month will not be enough to make an impact. Commissioner Bower stated that the Taskforce should discuss legislative issues need to be addressed first because of time frame of the Legislature. City issues can be addressed later, as there is more time. Commissioner Bower went through the check list items in order to identify which were city issues versus state issue. The conclusion was the #4 (Urge the Legislature to Strengthen the Condominium Act) was the first item that needed to be discussed. Items 1, 2, 3, 5 and 7 are city issues that can be discussed subsequently by the Taskforce.

ACTION: Taskforce to meet every other week. Motion made by Joe Fontana, seconded by Michael Gongora. (VOTE: All in favor)

ACTION: Taskforce to meet on Tuesdays, every other week commencing February 7, 2006. Motion made by Joe Fontana, seconded by Morris Sunshine. (VOTE: All in favor)

ACTION: Motion made by Joe Fontana to make hours for the subsequent meetings from 6PM-9PM. Seconded by Michael Gongora, with the amendment to set 9:00PM as maximum time. If meeting finishes earlier, then the Taskforce can adjourn. Opposed by Frank DeVecchio who suggested 2 hour limit 6PM-8PM. Motion passed as amended. (VOTE: 13 in favor; 2 opposed: by Frank DeVecchio and Milli Membiela)

The Taskforce's next meeting was scheduled for Tuesday, February 21, 2006 at 6:00pm. The meetings will be so advertised in the City's Meeting Calendar through the City Clerk.

Request made that agendas be provided to members via email as well as through regular mail in order for the members to have enough time to review the material prior to the meetings. Provide agendas Thursday or Friday before the Tuesday meeting via email, fax and mail.

Commissioner Bower requested that the Committee begin to identify the issues.

(1) Florida Statute Chapter 718.616 – report by engineer of condominium document submittals. Overseen by Bureau of Business and Professional Regulations, Rudolph Prince (contact). Committee questions how this could be supervised at the state level, if they are not physically here to see the building. City merely provides the State a zoning letter.

A) Strengthen the approval process at the State level (strengthen the State checklist)

- B) Request additional information be provided by the owner/developer
- C) Require that not only Planning provide a Zoning letter, but also involve the Building Department

Justo Gomez raised 3 issues:

1. Condo Conversions
2. Unit Owner: City doesn't know, and illegal construction is done
3. Hotel-Apartment: Developers must provide the Building Department information in order to pull permits, and therefore, the City can stop them.

Frank Del Vecchio – Condominium Act Discussion: In order to make an impact at the state level, the City Attorney's Office recommendation has merit. In terms of condo conversions must address Florida Statute Chapter 718.616.

1 – Checklist – merit for strengthening inclusion of Code citations
(all outstanding Building code violation, variances, substantial controversies and major litigation) Checklist to be included in next agenda.

-Enforcement – strengthen disclosure requirements at the State level

Starting point is the condominium conversions. Can start with this provision, and piggyback in subsequent meetings on other forms of disclosure requirements. Use the checklist as a starting point. **ACTION:** Motion made by Frank DelVecchio – next meeting #4, a-f; seconded by Luis Maseda. No discussion, all in favor.

2- City Attorney's Office to identify existing sections of the City Code licensing/occupancy requirements in the City Code for condos and placed on next agenda. **ACTION:** Motion by Frank DelVecchio; seconded by Milli Membiela; (VOTE: 13 in favor, 2 opposed - Morris Sunshine and Joe Fontana).

Buildings in the City of Miami Beach should not have a 40 year recertification, but rather 20 year recertification.

3- Major issue is the licensure of condominium management companies. Unsure if any legislation is proposed at the state level. **ACTION:** Motion made by DelVecchio – City to identify submitting/pending legislation at State level of licensure of condo management companies; seconded by Nina Baliga. (VOTE: 12 in favor, 3 opposed – Joe Fontana, Luis Maseda, Morris Sunshine)

Commissioner Garcia asked Tim Hemstreet if this was possible. Tim Hemstreet said that Kevin Crowder would be directed to handle this for the next agenda.

4- Include #4 (Urge the Legislature to Strengthen the Condo Act) items (a) – (f)

ACTION: Motion made by Frank DelVecchio – next meeting #4, a-f; seconded by Luis Maseda. No discussion, all in favor.

The meeting adjourned at approximately 8: 30 PM.

**FLORIDA STATUTE CHAPTER 718.616
(CHECKLIST) INCLUDING 20 YEAR
RECERTIFICATION**

**I
T
E
M
T
W
O**

718.616 Disclosure of condition of building and estimated replacement costs and notification of municipalities.—

(1) Each developer of a residential condominium created by converting existing, previously occupied improvements to such form of ownership shall disclose the condition of the improvements and the condition of certain components and their current estimated replacement costs.

(2) The following information shall be stated concerning the improvements:

(a) The date and type of construction.

(b) The prior use.

(c) Whether there is termite damage or infestation and whether the termite damage or infestation, if any, has been properly treated. The statement shall be substantiated by including, as an exhibit, an inspection report by a certified pest control operator.

(3)(a) Disclosure of condition shall be made for each of the following components that the existing improvements may include:

1. Roof.
2. Structure.
3. Fireproofing and fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.

(b) For each component, the following information shall be disclosed and substantiated by attaching a copy of a certificate under seal of an architect or engineer authorized to practice in this state:

1. The age of the component.
2. The estimated remaining useful life of the component.
3. The estimated current replacement cost of the component, expressed:
 - a. As a total amount; and
 - b. As a per-unit amount, based upon each unit's proportional share of the common expenses.
4. The structural and functional soundness of the component.

(4) If the proposed condominium is situated within a municipality, the disclosure shall include a letter from the municipality acknowledging that the municipality has been notified of the proposed creation of a residential condominium by conversion of existing, previously occupied improvements and, in any county, as defined in s. 125.011(1), acknowledging compliance with applicable zoning requirements as determined by the municipality.

History.—s. 1, ch. 80-3; s. 22, ch. 84-368; s. 14, ch. 94-350; s. 40, ch. 95-274; s. 5, ch. 96-396; s. 7, ch. 97-301.

FOR YOUR INFORMATION—

CHAPTER 718, PART V & PART VI

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

PART V

REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL CONDOMINIUMS

[718.501](#) Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.

[718.5011](#) Ombudsman; appointment; administration.

[718.5012](#) Ombudsman; powers and duties.

[718.5014](#) Ombudsman location.

[718.50151](#) Advisory council; membership functions.

[718.502](#) Filing prior to sale or lease.

[718.503](#) Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.

[718.504](#) Prospectus or offering circular.

[718.505](#) Good faith effort to comply.

[718.506](#) Publication of false and misleading information.

[718.507](#) Zoning and building laws, ordinances, and regulations.

[718.508](#) Regulation by Division of Hotels and Restaurants.

[718.509](#) Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005

[Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY[Chapter 718](#)
CONDOMINIUMS[View Entire Chapter](#)

718.501 Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.--

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has the following powers and duties:

(a) The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms hereunder.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.
2. The division may issue an order requiring the developer, association, officer, or member of the board of administration, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.
3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignee or agent, for any violation of this chapter or a rule promulgated pursuant hereto. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant hereto, or a final order of the division. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order will not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(e) The division is authorized to prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(g) The division shall establish procedures for providing notice to an association when the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing in such condominium community.

(h) The division shall furnish each association which pays the fees required by paragraph (2)(a) a copy of this act, subsequent changes to this act on an annual basis, an amended version of this act as it becomes available from the Secretary of State's office on a biennial basis, and the rules promulgated pursuant thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training programs for condominium association board members and

unit owners.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in either county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which factors must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements imposed by rules adopted by the division.

(m) When a complaint is made, the division shall conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(2)(a) Effective January 1, 1992, each condominium association which operates more than two units shall pay to the division an annual fee in the amount of \$4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, then the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund as provided by law.

History.--s. 1, ch. 76-222; s. 1, ch. 77-174; s. 2, ch. 77-221; s. 4, ch. 78-323; ss. 4, 12, ch. 78-340; s. 32, ch. 79-4; s. 15, ch. 79-314; s. 1, ch. 81-28; ss. 1, 2, 3, ch. 81-54; s. 4, ch. 81-172; s. 6, ch. 81-185; s. 477, ch. 81-259; ss. 1, 4, ch. 82-46; s. 2, ch. 82-113; ss. 5, 7, ch. 82-199; s. 154, ch. 83-216; s. 16, ch. 84-368; s. 5, ch. 85-60; s. 8, ch. 86-175; s. 18, ch. 87-102; s. 16, ch. 91-103; s. 5, ch. 91-426; s. 12, ch. 92-49; s. 233, ch. 94-218; s. 299, ch. 96-410; s. 1774, ch. 97-102; s. 3, ch. 97-301; s. 221, ch. 98-200; s. 62, ch. 2000-302; s. 1891, ch. 2003-261.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005[Go](#)

The 2005 Florida Statutes

Title XL	Chapter 718	View Entire Chapter
REAL AND PERSONAL PROPERTY	CONDOMINIUMS	

718.5011 Ombudsman; appointment; administration.--

(1) There is created an Office of the Condominium Ombudsman, to be located for administrative purposes within the Division of Florida Land Sales, Condominiums, and Mobile Homes. The functions of the office shall be funded by the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. The ombudsman shall be a bureau chief of the division, and the office shall be set within the division in the same manner as any other bureau is staffed and funded.

(2) The Governor shall appoint the ombudsman. The ombudsman must be an attorney admitted to practice before the Florida Supreme Court and shall serve at the pleasure of the Governor. A vacancy in the office shall be filled in the same manner as the original appointment. An officer or full-time employee of the ombudsman's office may not actively engage in any other business or profession; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

History.--s. 6, ch. 2004-345.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005[Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

718.5012 Ombudsman; powers and duties.--The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

- (1) To have access to and use of all files and records of the division.
- (2) To employ professional and clerical staff as necessary for the efficient operation of the office.
- (3) To prepare and issue reports and recommendations to the Governor, the department, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division. The ombudsman shall make recommendations he or she deems appropriate for legislation relative to division procedures, rules, jurisdiction, personnel, and functions.
- (4) To act as liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties. The ombudsman shall develop policies and procedures to assist unit owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities as set forth in this chapter and the condominium documents governing their respective association. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference material, and shall endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience.
- (5) To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred.
- (6) To make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.
- (7) To provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter, division rules, and the condominium documents governing the association.
- (8) To encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy. It is the intent of the Legislature that the ombudsman act as a neutral resource for both the rights and responsibilities of unit owners, associations, and board members.
- (9) Fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors. The ombudsman shall appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. All costs associated with the election monitoring process shall be paid by the association. The division shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

History.--ss. 7, 36, ch. 2004-345.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 

Go

The 2005 Florida Statutes

Title XL
REAL AND PERSONAL PROPERTY

Chapter 718
CONDOMINIUMS

[View Entire Chapter](#)

718.5014 Ombudsman location.--The ombudsman shall maintain his or her principal office in Leon County on the premises of the division or, if suitable space cannot be provided there, at another place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

History.--s. 8, ch. 2004-345.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005[Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY[Chapter 718](#)
CONDOMINIUMS[View Entire Chapter](#)

718.50151 Advisory council; membership functions.--

(1) There is created the Advisory Council on Condominiums. The council shall consist of seven appointed members. Two members shall be appointed by the President of the Senate, two members shall be appointed by the Speaker of the House of Representatives, and three members shall be appointed by the Governor. At least one member that is appointed by the Governor shall represent timeshare condominiums. Members shall be appointed to 2-year terms; however, one of the persons initially appointed by the Governor, by the President of the Senate, and by the Speaker of the House of Representatives shall be appointed to a 1-year term. The director of the division shall serve as an ex officio nonvoting member. The Legislature intends that the persons appointed represent a cross-section of persons interested in condominium issues. The council shall be located within the division for administrative purposes. Members of the council shall serve without compensation but are entitled to receive per diem and travel expenses pursuant to s. [112.061](#) while on official business.

(2) The functions of the advisory council shall be to:

(a) Receive, from the public, input regarding issues of concern with respect to condominiums and recommendations for changes in the condominium law. The issues that the council shall consider include, but are not limited to, the rights and responsibilities of the unit owners in relation to the rights and responsibilities of the association.

(b) Review, evaluate, and advise the division concerning revisions and adoption of rules affecting condominiums.

(c) Recommend improvements, if needed, in the education programs offered by the division.

(3) The council may elect a chair and vice chair and such other officers as it may deem advisable. The council shall meet at the call of its chair, at the request of a majority of its membership, at the request of the division, or at such times as it may prescribe. A majority of the members of the council shall constitute a quorum. Council action may be taken by vote of a majority of the voting members who are present at a meeting where there is a quorum.

History.--s. 5, ch. 2004-345.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005[Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY[Chapter 718](#)
CONDOMINIUMS[View Entire Chapter](#)

718.502 Filing prior to sale or lease.--

(1)(a) A developer of a residential condominium or mixed-use condominium shall file with the division one copy of each of the documents and items required to be furnished to a buyer or lessee by ss. [718.503](#) and [718.504](#), if applicable. Until the developer has so filed, a contract for sale of a unit or lease of a unit for more than 5 years shall be voidable by the purchaser or lessee prior to the closing of his or her purchase or lease of a unit.

(b) A developer may not close on any contract for sale or contract for a lease period of more than 5 years until the developer prepares and files with the division documents complying with the requirements of this chapter and the rules adopted by the division and until the division notifies the developer that the filing is proper and the developer prepares and delivers all documents required by s. [718.503](#)(1)(b) to the prospective buyer.

(c) The division by rule may develop filing, review, and examination requirements and relevant timetables to ensure compliance with the notice and disclosure provisions of this section.

(2)(a) Prior to filing as required by subsection (1), and prior to acquiring an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed, a developer shall not offer a contract for purchase of a unit or lease of a unit for more than 5 years. However, the developer may accept deposits for reservations upon the approval of a fully executed escrow agreement and reservation agreement form properly filed with the Division of Florida Land Sales, Condominiums, and Mobile Homes. Each filing of a proposed reservation program shall be accompanied by a filing fee of \$250. Reservations shall not be taken on a proposed condominium unless the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed. The division shall notify the developer within 20 days of receipt of the reservation filing of any deficiencies contained therein. Such notification shall not preclude the determination of reservation filing deficiencies at a later date, nor shall it relieve the developer of any responsibility under the law. The escrow agreement and the reservation agreement form shall include a statement of the right of the prospective purchaser to an immediate unqualified refund of the reservation deposit moneys upon written request to the escrow agent by the prospective purchaser or the developer.

(b) The executed escrow agreement signed by the developer and the escrow agent shall contain the following information:

1. A statement that the escrow agent will grant a prospective purchaser an immediate, unqualified refund of the reservation deposit moneys upon written request either directly to the escrow agent or to the developer.

2. A statement that the escrow agent is responsible for not releasing moneys directly to the developer except as a down payment on the purchase price at the time a contract is signed by the purchaser if provided in the contract.

(c) The reservation agreement form shall include the following:

1. A statement of the obligation of the developer to file condominium documents with the division prior to entering into a binding purchase agreement or binding agreement for a lease of more than

5 years.

2. A statement of the right of the prospective purchaser to receive all condominium documents as required by this chapter.

3. The name and address of the escrow agent.

4. A statement as to whether the developer assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for purchase and sale or that the price represented may be exceeded within a stated amount or percentage or that no assurance is given as to the price in the contract for purchase or sale.

5. A statement that the deposit must be payable to the escrow agent and that the escrow agent must provide a receipt to the prospective purchaser.

(3) Upon filing as required by subsection (1), the developer shall pay to the division a filing fee of \$20 for each residential unit to be sold by the developer which is described in the documents filed. If the condominium is to be built or sold in phases, the fee shall be paid prior to offering for sale units in any subsequent phase. Every developer who holds a unit or units for sale in a condominium shall submit to the division any amendments to documents or items on file with the division and deliver to purchasers all amendments prior to closing, but in no event, later than 10 days after the amendment. Upon filing of amendments to documents currently on file with the division, the developer shall pay to the division a filing fee of up to \$100 per filing, with the exact fee to be set by division rule.

(4) Any developer who complies with this section is not required to file with any other division or agency of this state for approval to sell the units in the condominium, the information for the condominium for which he or she filed.

(5) In addition to those disclosures described by ss. 718.503 and 718.504, the division is authorized to require such other disclosure as deemed necessary to fully or fairly disclose all aspects of the offering.

History.--s. 1, ch. 76-222; s. 8, ch. 79-314; s. 7, ch. 81-185; s. 17, ch. 84-368; s. 6, ch. 85-60; s. 19, ch. 87-102; s. 18, ch. 91-103; s. 5, ch. 91-426; s. 39, ch. 95-274; s. 868, ch. 97-102; s. 6, ch. 98-195.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005

[Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY[Chapter 718](#)
CONDOMINIUMS[View Entire Chapter](#)

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.--

(1) DEVELOPER DISCLOSURE.--

(a) *Contents of contracts.*--Any contract for the sale of a residential unit or a lease thereof for an unexpired term of more than 5 years shall:

1. Contain the following legend in conspicuous type: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

2. Contain the following caveat in conspicuous type on the first page of the contract: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

3. If the unit has been occupied by someone other than the buyer, contain a statement that the unit has been occupied.

4. If the contract is for the sale or transfer of a unit subject to a lease, include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

5. If the contract is for the lease of a unit for a term of 5 years or more, include as an exhibit a copy of the proposed lease.

6. If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other commonly used facility, contain within the text the following statement in conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7. State the name and address of the escrow agent required by s. 718.202 and state that the purchaser may obtain a receipt for his or her deposit from the escrow agent upon request.

8. If the contract is for the sale or transfer of a unit in a condominium in which timeshare estates have been or may be created, contain within the text in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES. The contract for the sale of a fee interest in a

timeshare estate shall also contain, in conspicuous type, the following: FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.

(b) *Copies of documents to be furnished to prospective buyer or lessee.*--Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a residential unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may not close for 15 days following the execution of the agreement and delivery of the documents to the buyer as evidenced by a signed receipt for documents unless the buyer is informed in the 15-day voidability period and agrees to close prior to the expiration of the 15 days. The developer shall retain in his or her records a separate agreement signed by the buyer as proof of the buyer's agreement to close prior to the expiration of said voidability period. Said proof shall be retained for a period of 5 years after the date of the closing of the transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to the provisions of s. 718.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 718.504, and declaration of condominium, or the proposed declaration if the declaration has not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 718.104.
2. The documents creating the association.
3. The bylaws.
4. The ground lease or other underlying lease of the condominium.
5. The management contract, maintenance contract, and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.
6. The estimated operating budget for the condominium and a schedule of expenses for each type of unit, including fees assessed pursuant to s. 718.113(1) for the maintenance of limited common elements where such costs are shared only by those entitled to use the limited common elements.
7. The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.
8. The lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums.
9. The form of unit lease if the offer is of a leasehold.
10. Any declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.
11. If the development is to be built in phases or if the association is to manage more than one condominium, a description of the plan of phase development or the arrangements for the association to manage two or more condominiums.

12. If the condominium is a conversion of existing improvements, the statements and disclosure required by s. 718.616.
13. The form of agreement for sale or lease of units.
14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.
15. A copy of all covenants and restrictions which will affect the use of the property and which are not contained in the foregoing.
16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1), or a statement that such acceptance or approval has not been acquired or received.
17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

(2) NONDEVELOPER DISCLOSURE.--

(a) Each unit owner who is not a developer as defined by this chapter shall comply with the provisions of this subsection prior to the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of the declaration of condominium, articles of incorporation of the association, bylaws and rules of the association, financial information required by s. 718.111, and the document entitled "Frequently Asked Questions and Answers" required by s. 718.504.

(b) If a person licensed under part I of chapter 475 provides to or otherwise obtains for a prospective purchaser the documents described in this subsection, the person is not liable for any error or inaccuracy contained in the documents.

(c) Each contract entered into after July 1, 1992, for the resale of a residential unit shall contain in conspicuous type either:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

(3) OTHER DISCLOSURE.--

(a) If residential condominium parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common elements, or prior to completion of remodeling of previously occupied buildings, the developer shall make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common elements appurtenant to the unit.

(b) Sales brochures, if any, shall be provided to each purchaser, and the following caveat in conspicuous type shall be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE. If timeshare estates have been or may be created with respect to any unit in the condominium, the sales brochure shall contain the following statement in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES.

History.--s. 1, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 78-328; s. 16, ch. 79-314; s. 4, ch. 80-3; s. 2, ch. 82-199; s. 59, ch. 82-226; s. 18, ch. 84-368; s. 19, ch. 91-103; s. 5, ch. 91-426; s. 14, ch. 92-49; s. 869, ch. 97-102; s. 7, ch. 98-195; s. 5, ch. 98-322; s. 14, ch. 2002-27; s. 10, ch. 2004-345; s. 6, ch. 2004-353.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005

[Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY[Chapter 718](#)
CONDOMINIUMS[View Entire Chapter](#)

718.504 Prospectus or offering circular.--Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Land Sales, Condominiums, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which shall be in accordance with a format approved by the division and a copy of the financial information required by s. 718.111. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of \$100,000; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(1) The front cover or the first page must contain only:

(a) The name of the condominium.

(b) The following statements in conspicuous type:

1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.

2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.

3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

(2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text (not including the summary and index), a description of

the condominium, including, but not limited to, the following information:

(a) Its name and location.

(b) A description of the condominium property, including, without limitation:

1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units, if the condominium is not a phase condominium, or the maximum number of buildings that may be contained within the condominium, the minimum and maximum numbers of units in each building, the minimum and maximum numbers of bathrooms and bedrooms that may be contained in each unit, and the maximum number of units that may be contained within the condominium, if the condominium is a phase condominium.

2. The page in the condominium documents where a copy of the plot plan and survey of the condominium is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, the description shall include a statement that the estimated date of completion of the condominium is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the condominium. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner's maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5)(a) A statement in conspicuous type describing whether the condominium is created and being sold as fee simple interests or as leasehold interests. If the condominium is created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(b) If timeshare estates are or may be created with respect to any unit in the condominium, a statement in conspicuous type stating that timeshare estates are created and being sold in units in the condominium.

(6) A description of the recreational and other commonly used facilities that will be used only by unit owners of the condominium, including, but not limited to, the following:

(a) Each room and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit

owners.

(f)1. An identification of each room or other facility to be used by unit owners that will not be owned by the unit owners or the association;

2. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above; their general locations and types; improvements or changes that may be made; the approximate dollar amount to be expended; and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other condominiums, community associations, or planned developments which require the payment of the maintenance and expenses of such facilities, either directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built.

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other facilities offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS CONDOMINIUM; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM. There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS; or
2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or
3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or
4. A similar statement of the nature of the organization or the manner in which the use rights are created, and that unit owners are required to pay.

Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, reserves, or is entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES. Immediately following this statement, the location in the disclosure materials where the rent or land use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association has the right to a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or
2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person has the right to increase or add to the recreational facilities at any time after the establishment of the condominium whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION

(S). Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldfaced type that: **THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.**

(11) The arrangements for management of the association and maintenance and operation of the condominium property and of other property that will serve the unit owners of the condominium property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

(a) The names of contracting parties.

(b) The term of the contract.

(c) The nature of the services included.

(d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the condominium documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the condominium property, then a statement in conspicuous type in substantially the following form shall appear, identifying the proposed or existing contract manager: **THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH (NAME OF THE CONTRACT MANAGER).** Immediately following this statement, the location in the disclosure materials of the contract for management of the condominium property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that condominium to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included: **THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.** Immediately following this statement, the location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in conspicuous type in substantially the following form shall be included: **THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.** Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the condominium is part of a phase project, the following information shall be stated:

(a) A statement in conspicuous type in substantially the following form: **THIS IS A PHASE CONDOMINIUM. ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS CONDOMINIUM.** Immediately following this statement, the location in the disclosure materials where the phasing is described shall be stated.

(b) A summary of the provisions of the declaration which provide for the phasing.

(c) A statement as to whether or not residential buildings and units which are added to the condominium may be substantially different from the residential buildings and units originally in the condominium. If the added residential buildings and units may be substantially different, there shall be a general description of the extent to which such added residential buildings and units may differ, and a statement in conspicuous type in substantially the following form shall be included: BUILDINGS AND UNITS WHICH ARE ADDED TO THE CONDOMINIUM MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND UNITS IN THE CONDOMINIUM. Immediately following this statement, the location in the disclosure materials where the extent to which added residential buildings and units may substantially differ is described shall be stated.

(d) A statement of the maximum number of buildings containing units, the maximum and minimum numbers of units in each building, the maximum number of units, and the minimum and maximum square footage of the units that may be contained within each parcel of land which may be added to the condominium.

(15) If a condominium created on or after July 1, 2000, is or may become part of a multicondominium, the following information must be provided:

(a) A statement in conspicuous type in substantially the following form: THIS CONDOMINIUM IS (MAY BE) PART OF A MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL (MAY) BE OPERATED BY THE SAME ASSOCIATION. Immediately following this statement, the location in the prospectus or offering circular and its exhibits where the multicondominium aspects of the offering are described must be stated.

(b) A summary of the provisions in the declaration, articles of incorporation, and bylaws which establish and provide for the operation of the multicondominium, including a statement as to whether unit owners in the condominium will have the right to use recreational or other facilities located or planned to be located in other condominiums operated by the same association, and the manner of sharing the common expenses related to such facilities.

(c) A statement of the minimum and maximum number of condominiums, and the minimum and maximum number of units in each of those condominiums, which will or may be operated by the association, and the latest date by which the exact number will be finally determined.

(d) A statement as to whether any of the condominiums in the multicondominium may include units intended to be used for nonresidential purposes and the purpose or purposes permitted for such use.

(e) A general description of the location and approximate acreage of any land on which any additional condominiums to be operated by the association may be located.

(16) If the condominium is created by conversion of existing improvements, the following information shall be stated:

(a) The information required by s. 718.616.

(b) A caveat that there are no express warranties unless they are stated in writing by the developer.

(17) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the condominium property, including statements as to whether there are restrictions upon children and pets, and reference to the volumes and pages of the condominium documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(18) If there is any land that is offered by the developer for use by the unit owners and that is

neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the condominium. If any part of such land will serve the condominium, the statement shall describe the land and the nature and term of service, and the declaration or other instrument creating such servitude shall be included as an exhibit.

(19) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage, will be provided and the person or entity furnishing them.

(20) An explanation of the manner in which the apportionment of common expenses and ownership of the common elements has been determined.

(21) An estimated operating budget for the condominium and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(a) The estimated monthly and annual expenses of the condominium and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than common expenses paid by all unit owners, payable by the unit owner to persons or entities other than the association, as well as to the association, including fees assessed pursuant to s. 718.113(1) for maintenance of limited common elements where such costs are shared only by those entitled to use the limited common element, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses which are not provided for or contemplated by the condominium documents, including, but not limited to, the costs of private telephone; maintenance of the interior of condominium units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his or her unit; insurance premiums other than those incurred for policies obtained by the condominium; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the condominium and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated either as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and condominium:

a. Administration of the association.

b. Management fees.

c. Maintenance.

d. Rent for recreational and other commonly used facilities.

e. Taxes upon association property.

f. Taxes upon leased areas.

g. Insurance.

h. Security provisions.

i. Other expenses.

j. Operating capital.

k. Reserves.

l. Fees payable to the division.

2. Expenses for a unit owner:

a. Rent for the unit, if subject to a lease.

b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(22) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(23) The identity of the developer and the chief operating officer or principal directing the creation and sale of the condominium and a statement of its and his or her experience in this field.

(24) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(a) The declaration of condominium, or the proposed declaration if the declaration has not been recorded.

(b) The articles of incorporation creating the association.

(c) The bylaws of the association.

(d) The ground lease or other underlying lease of the condominium.

(e) The management agreement and all maintenance and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year.

(f) The estimated operating budget for the condominium and the required schedule of unit owners' expenses.

(g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(h) The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

- (i) The lease of facilities used by owners and others.
- (j) The form of unit lease, if the offer is of a leasehold.
- (k) A declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.
- (l) The statement of condition of the existing building or buildings, if the offering is of units in an operation being converted to condominium ownership.
- (m) The statement of inspection for termite damage and treatment of the existing improvements, if the condominium is a conversion.
- (n) The form of agreement for sale or lease of units.
- (o) A copy of the agreement for escrow of payments made to the developer prior to closing.
- (p) A copy of the documents containing any restrictions on use of the property required by subsection (17).
- (25) Any prospectus or offering circular complying, prior to the effective date of this act, with the provisions of former ss. 711.69 and 711.802 may continue to be used without amendment or may be amended to comply with the provisions of this chapter.
- (26) A brief narrative description of the location and effect of all existing and intended easements located or to be located on the condominium property other than those described in the declaration.
- (27) If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1) or a statement that such acceptance or approval has not been acquired or received.
- (28) Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

History.--s. 1, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 78-328; s. 17, ch. 79-314; s. 5, ch. 80-3; s. 19, ch. 84-368; s. 7, ch. 85-60; s. 19, ch. 90-151; s. 20, ch. 91-103; s. 5, ch. 91-426; s. 15, ch. 92-49; s. 870, ch. 97-102; s. 6, ch. 98-322; s. 61, ch. 2000-302; s. 22, ch. 2001-64; s. 15, ch. 2002-27.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

718.505 Good faith effort to comply.--If a developer, in good faith, has attempted to comply with the requirements of this part, and if, in fact, he or she has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

History.--s. 1, ch. 76-222; s. 871, ch. 97-102.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005[Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY[Chapter 718](#)
CONDOMINIUMS[View Entire Chapter](#)

718.506 Publication of false and misleading information.--

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, pays anything of value toward the purchase of a condominium parcel located in this state shall have a cause of action to rescind the contract or collect damages from the developer for his or her loss prior to the closing of the transaction. After the closing of the transaction, the purchaser shall have a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a) through (d) shall occur:

(a) The closing of the transaction;

(b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section, evidence of lawful occupancy shall be deemed to be given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer is obligated to complete or provide under the terms of the written contract or written agreement for purchase or lease of the unit; or

(d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

(2) In any action for relief under this section or under s. [718.503](#), the prevailing party shall be entitled to recover reasonable attorney's fees.

History.--s. 1, ch. 76-222; s. 872, ch. 97-102.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

718.507 Zoning and building laws, ordinances, and regulations.--All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the condominium form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the condominium form of ownership. This section does not apply if the owner in fee of any land enters into and records a covenant that existing improvements or improvements to be constructed shall not be converted to the condominium form of residential ownership prior to 5 years after the later of the date of the covenant or completion date of the improvements. Such covenant shall be entered into with the governing body of the municipality in which the land is located or, if the land is not located in a municipality, with the governing body of the county in which the land is located.

History.--s. 1, ch. 76-222; s. 6, ch. 80-3.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

718.508 Regulation by Division of Hotels and Restaurants.--In addition to the authority, regulation, or control exercised by the Division of Florida Land Sales, Condominiums, and Mobile Homes pursuant to this act with respect to condominiums, buildings included in a condominium property shall be subject to the authority, regulation, or control of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, to the extent provided for in chapter 399.

History.--s. 1, ch. 76-222; s. 8, ch. 85-60; s. 235, ch. 94-218.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

718.509 Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.--All funds collected by the division and any amount paid for a fee or penalty under this chapter shall be deposited in the State Treasury to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund created by s. [498.019](#).

History.--s. 5, ch. 81-172; s. 20, ch. 83-339; s. 20, ch. 87-102.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

PART VI

CONVERSIONS TO CONDOMINIUM

[718.604](#) Short title.

[718.606](#) Conversion of existing improvements to condominium; rental agreements.

[718.608](#) Notice of intended conversion; time of delivery; content.

[718.61](#) Notices.

[718.612](#) Right of first refusal.

[718.614](#) Economic information to be provided.

[718.616](#) Disclosure of condition of building and estimated replacement costs and notification of municipalities.

[718.618](#) Converter reserve accounts; warranties.

[718.62](#) Prohibition of discrimination against nonpurchasing tenants.

[718.621](#) Rulemaking authority.

[718.622](#) Saving clause.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 

Go

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

718.604 Short title.--This part shall be known and may be cited as the "Roth Act" in memory of Mr. James S. Roth, Director, Division of Florida Land Sales and Condominiums, 1979-1980.

History.--s. 1, ch. 80-3.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005[Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY[Chapter 718](#)
CONDOMINIUMS[View Entire Chapter](#)

718.606 Conversion of existing improvements to condominium; rental agreements.--When existing improvements are converted to ownership as a residential condominium:

(1)(a) Each residential tenant who has resided in the existing improvements for at least the 180 days preceding the date of the written notice of intended conversion shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 270 days after the date of the notice. If the rental agreement expires more than 270 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(b) Each other residential tenant shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 180 days after the date of the written notice of intended conversion. If the rental agreement expires more than 180 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(2)(a) In order to extend the rental agreement as provided in subsection (1), a tenant shall, within 45 days after the date of the written notice of intended conversion, give written notice to the developer of the intention to extend the rental agreement.

(b) If the rental agreement will expire within 45 days following the date of the notice, the tenant may remain in occupancy for the 45-day decision period upon the same terms by giving the developer written notice and paying rent on a pro rata basis from the expiration date of the rental agreement to the end of the 45-day period.

(c) The tenant may extend the rental agreement for the full extension period or a part of the period.

(3) After the date of a notice of intended conversion, a tenant may terminate any rental agreement, or any extension period having an unexpired term of 180 days or less, upon 30 days' written notice to the developer. However, unless the rental agreement was entered into, extended, or renewed after the effective date of this part, the tenant may not unilaterally terminate the rental agreement but may unilaterally terminate any extension period having an unexpired term of 180 days or less upon 30 days' written notice.

(4) A developer may elect to provide tenants who have been continuous residents of the existing improvements for at least 180 days preceding the date of the written notice of intended conversion and whose rental agreements expire within 180 days of the date of the written notice of intended conversion the option of receiving in cash a tenant relocation payment at least equal to 1 month's rent in consideration for extending the rental agreement for not more than 180 days, rather than extending the rental agreement for up to 270 days.

(5) A rental agreement may provide for termination by the developer upon 60 days' written notice if the rental agreement is entered into subsequent to the delivery of the written notice of intended conversion to all tenants and conspicuously states that the existing improvements are to be converted. No other provision in a rental agreement shall be enforceable to the extent that it purports to reduce the extension period provided by this section or otherwise would permit a developer to terminate a rental agreement in the event of a conversion. This subsection applies to rental agreements entered into, extended, or renewed after the effective date of this part; the termination provisions of all other rental agreements are governed by the provisions of s. [718.402](#)

(3), Florida Statutes 1979.

(6) Any provision of this section or of the rental agreement or other contract or agreement to the contrary notwithstanding, whenever a county, including a charter county, determines that there exists within the county a vacancy rate in rental housing of 3 percent or less, the county may adopt an ordinance or other measure extending the 270-day extension period described in paragraph (1) (a) and the 180-day extension described in paragraph (1)(b) for an additional 90 days, if:

(a) Such measure was duly adopted, after notice and public hearing, in accordance with all applicable provisions of the charter governing the county and any other applicable laws; and

(b) The governing body has made and recited in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.

A county ordinance or other measure adopting an additional 90-day extension under the provisions of this section is controlling throughout the entire county, including a charter county, where adopted, including all municipalities, unless a municipality votes not to have it apply within its boundaries.

History.--s. 1, ch. 80-3; s. 20, ch. 84-368.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005[Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY[Chapter 718](#)
CONDOMINIUMS[View Entire Chapter](#)

718.608 Notice of intended conversion; time of delivery; content.--

(1) Prior to or simultaneous with the first offering of individual units to any person, each developer shall deliver a notice of intended conversion to all tenants of the existing improvements being converted to residential condominium. All such notices shall be given within a 72-hour period.

(2)(a) Each notice of intended conversion shall be dated and in writing. The notice shall contain the following statement, with the phrases of the following statement which appear in upper case printed in conspicuous type:

These apartments are being converted to condominium by (name of developer), the developer.

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 180 days, you may extend your rental agreement for up to 180 days after the date of this notice.

c. IN ORDER FOR YOU TO EXTEND YOUR RENTAL AGREEMENT, YOU MUST GIVE THE DEVELOPER WRITTEN NOTICE WITHIN 45 DAYS AFTER THE DATE OF THIS NOTICE.

2. IF YOUR RENTAL AGREEMENT EXPIRES IN THE NEXT 45 DAYS, you may extend your rental agreement for up to 45 days after the date of this notice while you decide whether to extend your rental agreement as explained above. To do so, you must notify the developer in writing. You will then have the full 45 days to decide whether to extend your rental agreement as explained above.

3. During the extension of your rental agreement you will be charged the same rent that you are now paying.

4. YOU MAY CANCEL YOUR RENTAL AGREEMENT AND ANY EXTENSION OF THE RENTAL AGREEMENT AS FOLLOWS:

a. If your rental agreement began or was extended or renewed after May 1, 1980, and your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may cancel your rental agreement upon 30 days' written notice and move. Also, upon 30 days' written notice, you may cancel any extension of the rental agreement.

b. If your rental agreement was not begun or was not extended or renewed after May 1, 1980, you may not cancel the rental agreement without the consent of the developer. If your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may, however, upon 30 days' written notice cancel any extension of the rental agreement.

5. All notices must be given in writing and sent by mail, return receipt requested, or delivered in person to the developer at this address: (name and address of developer).
6. If you have continuously been a resident of these apartments during the last 180 days:
 - a. You have the right to purchase your apartment and will have 45 days to decide whether to purchase. If you do not buy the unit at that price and the unit is later offered at a lower price, you will have the opportunity to buy the unit at the lower price. However, in all events your right to purchase the unit ends when the rental agreement or any extension of the rental agreement ends or when you waive this right in writing.
 - b. Within 90 days you will be provided purchase information relating to your apartment, including the price of your unit and the condition of the building. If you do not receive this information within 90 days, your rental agreement and any extension will be extended 1 day for each day over 90 days until you are given the purchase information. If you do not want this rental agreement extension, you must notify the developer in writing.
7. If you have any questions regarding this conversion or the Condominium Act, you may contact the developer or the state agency which regulates condominiums: The Division of Florida Land Sales, Condominiums, and Mobile Homes, (Tallahassee address and telephone number of division).
- (b) When a developer offers tenants an optional tenant relocation payment pursuant to s. 718.606 (4), the notice of intended conversion shall contain a statement substantially as follows:

If you have been a continuous resident of these apartments for the last 180 days and your lease expires during the next 180 days, you may extend your rental agreement for up to 270 days, or you may extend your rental agreement for up to 180 days and receive a cash payment at least equal to 1 month's rent. You must make your decision and inform the developer in writing within 45 days after the date of this notice.

(c) When the rental agreement extension provisions of s. 718.606(6) are applicable to a conversion, subparagraphs 1.a. and b. of the notice of intended conversion shall read as follows:

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

- a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 360 days, you may extend your rental agreement for up to 360 days after the date of this notice.
- b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

(3) Notice of intended conversion may not be waived by a tenant unless the tenant's lease conspicuously states that the building is to be converted and the other tenants residing in the building have previously received a notice of intended conversion.

(4) Upon the request of a developer and payment of a fee prescribed by the rules of the division, not to exceed \$50, the division may verify to a developer that a notice complies with this section.

(5) Prior to delivering a notice of intended conversion to tenants of existing improvements being converted to a residential condominium, each developer shall file with the division and receive approval of a copy of the notice of intended conversion. Upon filing, each developer shall pay to the division a filing fee of \$100.

History.--s. 1, ch. 80-3; s. 9, ch. 85-60; s. 9, ch. 86-175; s. 21, ch. 91-103; s. 5, ch. 91-426.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

Title XL	Chapter 718	View Entire Chapter
REAL AND PERSONAL PROPERTY	CONDOMINIUMS	
718.61 Notices.--		

(1) All notices from tenants to a developer shall be deemed given when deposited in the United States mail, addressed to the developer's address as stated in the notice of conversion, and sent postage prepaid, return receipt requested, or when personally delivered in writing by the tenant to the developer at such address. The date of a notice is the date when it is mailed or personally delivered by the tenant.

(2) All notices from developers to tenants shall be deemed given when deposited in the United States mail, addressed to the tenant's last known residence, which may be the address of the property subject to the rental agreement, and sent by certified or registered mail, postage prepaid. The date of a notice is the date when it is mailed to the tenant.

History.--s. 1, ch. 80-3.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

718.612 Right of first refusal.--

(1) Each tenant, who for the 180 days preceding a notice of intended conversion has been a residential tenant of the existing improvements, shall have the right of first refusal to purchase the unit in which he or she resides on the date of the notice, under the following terms and conditions:

(a) Within 90 days following the written notice of the intended conversion, the developer shall deliver to the tenant the following purchase materials: an offer to sell stating the price and terms of purchase, the economic information required by s. [718.614](#), and the disclosure documents required by ss. [718.503](#) and [718.504](#). The failure by the developer to deliver such purchase materials within 90 days following the written notice of the intended conversion will automatically extend the rental agreement, any extension of the rental agreement provided for in s. [718.606](#), or any other extension of the rental agreement. The extension shall be for that number of days in excess of 90 days that has elapsed from the date of the written notice of the intended conversion to the date when the purchase materials are delivered.

(b) The tenant shall have the right of first refusal to purchase the unit for a period of not less than 45 days after mailing or personal delivery of the purchase materials.

(c) If, after any right of first refusal has expired, the developer offers the unit at a price lower than that offered to the tenant, the developer shall in writing notify the tenant prior to the publication of the offer. The tenant shall have the right of first refusal at the lower price for a period of not less than an additional 10 days after the date of the notice. Thereafter, the tenant shall have no additional right of first refusal. As used in this paragraph, the term "offer" includes any solicitation to the general public by means of newspaper advertisement, radio, television, or written or printed sales literature or price list but does not include a transaction involving the sale of more than one unit to one purchaser.

(2) Prior to closing on the sale of the unit, a tenant alleging a developer's violation of paragraph (1)(c) may bring an action for equitable or other relief, including specific performance. Subsequent to closing, the tenant's sole remedy for such a violation will be damages. In addition to any damages otherwise recoverable by law, the tenant is entitled to an amount equal to the difference between the price last offered in writing to the tenant pursuant to this section and the price at which the unit was sold to a third party, plus court costs and attorney's fees.

(3) It is against the public policy of this state for any developer to seek to enforce any provision of any contract which purports to waive the right of a purchasing tenant to bring an action for specific performance.

(4) A tenant's right of first refusal terminates upon:

(a) The termination of the rental agreement and all extensions thereof;

(b) Waiver of the right in writing by the tenant, if the waiver is executed subsequent to the date of the notice of intended conversion. A tenant who waives the right of first refusal waives the right to receive the purchase materials; or

(c) The running of the tenant's 45-day right of first refusal and the additional 10-day period

provided for by paragraph (1)(c), if applicable.

History.--s. 1, ch. 80-3; s. 478, ch. 81-259; s. 21, ch. 84-368; s. 873, ch. 97-102.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

718.614 Economic information to be provided.--The developer shall distribute to tenants having a right of first refusal, if any:

- (1) Information in summary form regarding mortgage financing; estimated down payment; alternative financing and down payments; monthly payments of principal, interest, and real estate taxes; and federal income tax benefits.
- (2) Any other information which the division publishes and by rule determines will assist tenants in making a decision and which the division makes available to the developer.

History.--s. 1, ch. 80-3; s. 10, ch. 85-60; s. 13, ch. 94-350.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005[Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY[Chapter 718](#)
CONDOMINIUMS[View Entire Chapter](#)

718.616 Disclosure of condition of building and estimated replacement costs and notification of municipalities.--

(1) Each developer of a residential condominium created by converting existing, previously occupied improvements to such form of ownership shall disclose the condition of the improvements and the condition of certain components and their current estimated replacement costs.

(2) The following information shall be stated concerning the improvements:

(a) The date and type of construction.

(b) The prior use.

(c) Whether there is termite damage or infestation and whether the termite damage or infestation, if any, has been properly treated. The statement shall be substantiated by including, as an exhibit, an inspection report by a certified pest control operator.

(3)(a) Disclosure of condition shall be made for each of the following components that the existing improvements may include:

1. Roof.
2. Structure.
3. Fireproofing and fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.

(b) For each component, the following information shall be disclosed and substantiated by attaching a copy of a certificate under seal of an architect or engineer authorized to practice in this state:

1. The age of the component.
 2. The estimated remaining useful life of the component.
 3. The estimated current replacement cost of the component, expressed:
 - a. As a total amount; and
 - b. As a per-unit amount, based upon each unit's proportional share of the common expenses.
 4. The structural and functional soundness of the component.
- (4) If the proposed condominium is situated within a municipality, the disclosure shall include a letter from the municipality acknowledging that the municipality has been notified of the proposed creation of a residential condominium by conversion of existing, previously occupied improvements and, in any county, as defined in s. 125.011(1), acknowledging compliance with applicable zoning requirements as determined by the municipality.

History.--s. 1, ch. 80-3; s. 22, ch. 84-368; s. 14, ch. 94-350; s. 40, ch. 95-274; s. 5, ch. 96-396; s. 7, ch. 97-301.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005

Go

The 2005 Florida Statutes

Title XL
REAL AND PERSONAL PROPERTY

Chapter 718
CONDOMINIUMS

[View Entire Chapter](#)

718.618 Converter reserve accounts; warranties.--

(1) When existing improvements are converted to ownership as a residential condominium, the developer shall establish reserve accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the reserve accounts in amounts calculated as follows:

(a)1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

Roof Type	Numerator	Denominator
a. Built-up roof without insulation	4	5
b. Built-up roof with insulation	4	5
c. Cement tile roof	45	50
d. Asphalt shingle roof	14	15
e. Copper roof		
f. Wood shingle roof	9	10
g. All other types	18	20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years from the later of:

1. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or

2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be measured from the date of replacement or

renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

1. The date of the replacement or renewal; and
2. That the replacement or renewal at least met the requirements of the then-applicable building code.

(d) In addition to establishing the reserve accounts specified above, the developer shall establish those other reserve accounts required by s. 718.112(2)(f), and shall fund those accounts in accordance with the formula provided therein.

(2)(a) The developer shall fund the reserve account required by subsection (1), on a pro rata basis upon the sale of each unit. The developer shall deposit in the reserve account not less than a percentage of the total amount to be deposited in the reserve account equal to the percentage of ownership of the common elements allocable to the unit sold. When a developer deposits amounts in excess of the minimum reserve account funding, later deposits may be reduced to the extent of the excess funding. For the purposes of this subsection, a unit is considered sold when a fee interest in the unit is transferred to a third party or the unit is leased for a period in excess of 5 years.

(b) When an association makes an expenditure of reserve account funds before the developer has sold all units, the developer shall make a deposit in the reserve account. Such deposit shall be at least equal to that portion of the expenditure which would be charged against the reserve account deposit that would have been made for any such unit had the unit been sold. Such deposit may be reduced to the extent the developer has funded the reserve account in excess of the minimum reserve account funding required by this subsection. This paragraph applies only when the developer has funded reserve accounts as provided by paragraph (a).

(3) The use of reserve account funds is limited as follows:

(a) Reserve account funds may be spent prior to the assumption of control of the association by unit owners other than the developer; and

(b) Reserve account funds may be expended only for repair or replacement of the specific components for which the funds were deposited, unless, after assumption of control of the association by unit owners other than the developer, it is determined by three-fourths of the voting interests in the condominium to expend the funds for other purposes.

(4) The developer shall establish the reserve account in the name of the association at a bank, savings and loan association, or trust company located in this state.

(5) A developer may establish and fund additional reserve accounts.

(6) A developer makes no implied warranties when existing improvements are converted to ownership as a residential condominium and reserve accounts are funded in accordance with this section. As an alternative to establishing such reserve accounts, or when a developer fails to establish the reserve accounts in accordance with this section, the developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended, as to the roof and structural components of the improvements; as to fireproofing and fire protection systems; and as to mechanical, electrical, and plumbing elements serving the improvements, except mechanical elements serving only one unit. The warranty shall be for a period beginning with the notice of intended conversion and continuing for 3 years thereafter, or the recording of the declaration to condominium and continuing for 3 years thereafter, or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(a) The warranty provided for in this section is conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(b) The warranty shall inure to the benefit of each owner and successor owner.

(c) Existing improvements converted to residential condominium may be covered by an insured warranty program underwritten by an insurance company authorized to do business in this state, if such warranty program meets the minimum requirements of this chapter. To the degree that the warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

(7) When a developer desires to post a surety bond, the developer shall, after notification to the buyer, acquire a surety bond issued by a company licensed to do business in this state, if such a bond is readily available in the open market, in an amount which would be equal to the total amount of all reserve accounts required under subsection (1), payable to the association.

(8) The amended provisions of this section do not affect a conversion of existing improvements when a developer has filed a notice of intended conversion and the documents required by s. 718.503 or s. 718.504, as applicable, with the division prior to the effective date of this law, provided:

(a) The documents are proper for filing purposes.

(b) The developer, not later than 6 months after such filing:

1. Records a declaration for such filing in accordance with part I.

2. Gives a notice of intended conversion.

History.--s. 1, ch. 80-3; s. 23, ch. 84-368; s. 20, ch. 90-151; s. 22, ch. 91-103; s. 5, ch. 91-426; s. 15, ch. 94-350.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

718.62 Prohibition of discrimination against nonpurchasing tenants.--When existing improvements are converted to condominium, tenants who have not purchased a unit in the condominium being created shall, during the remaining term of the rental agreement and any extension thereof, be entitled to the same rights, privileges, and services that were enjoyed by all tenants prior to the date of the written notice of conversion and that are granted, offered, or provided to purchasers.

History.--s. 1, ch. 80-3.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 718](#)
CONDOMINIUMS

[View Entire Chapter](#)

718.621 Rulemaking authority.--The division is authorized to adopt rules pursuant to the Administrative Procedure Act to administer and ensure compliance with developers' obligations with respect to condominium conversions concerning the filing and noticing of intended conversion, rental agreement extensions, rights of first refusal, and disclosure and postpurchase protections.

History.--s. 8, ch. 98-195.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

Select Year: 2005 [Go](#)

The 2005 Florida Statutes

Title XL	Chapter 718	View Entire Chapter
REAL AND PERSONAL PROPERTY	CONDOMINIUMS	

718.622 Saving clause.--

(1) All notices of intended conversion given subsequent to the effective date of this part shall be subject to the requirements of ss. [718.606](#), [718.608](#), and [718.61](#). Tenants given such notices shall have a right of first refusal as provided by s. [718.612](#).

(2) The disclosure provided by s. [718.616](#) and required by ss. [718.503](#) and [718.504](#) to be furnished to each prospective buyer or lessee for a period of more than 5 years shall be provided to any such person who has not, prior to May 1, 1980, been furnished the documents, prospectus, or offering circular required by ss. [718.503](#) and [718.504](#).

(3) The provisions of s. [718.618](#) do not affect a conversion of existing improvements when a developer has filed with the division prior to May 1, 1980, provided:

(a) The documents are proper for filing purposes; and

(b) The developer, not later than 6 months after such filing:

1. Records a declaration for such filing in accordance with part I of this chapter, and
2. Gives a notice of intended conversion.

History.--s. 13, ch. 80-3.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes. Copyright © 2000-2005 State of Florida.

**EXISTING SECTIONS OF THE CITY CODE
LICENSING AND/OR OCCUPANCY
REQUIREMENTS IN THE CITY CODE FOR
CONDOMINIUMS**

**MATERIALS TO BE DISTRIBUTED AT
MEETING**

**I
T
E
M

T
H
R
E
E**

SUBMITTED/PENDING LEGISLATION AT STATE LEVEL OF LICENSURE OF CONDO MANAGEMENT COMPANIES

**I
T
E
M

F
O
U
R**

2006

Folder > Condominiums

HB 0391 Relating to Community Associations Domino 02/06/06
Community Associations; provides for revival of certain declarations that have extinguished; requires holder of recorded mortgage on condominium unit that requires consent or joinder of mortgagee to amendment to provide certain info. to condominium association; requires notice re proposed amendments to mortgagees; revises governing provisions re corporations not for profit that operate residential homeowners' associations, etc. Amends Ch. 720, 718.110; creates 712.11. EFFECTIVE DATE: 07/01/2006 except as otherwise provided.
11/15/05 HOUSE Filed
12/28/05 HOUSE Referred to Civil Justice; Justice Appropriations; Justice Council
12/30/05 HOUSE Now in Civil Justice
01/13/06 HOUSE Original references removed: Justice Appropriations; Referred to Civil Justice; Judiciary Appropriations; Justice Council; On Committee agenda - Civil Justice, 01/25/06, 9:30 am, 24-H
01/25/06 HOUSE Favorable with CS by Civil Justice; 6 Yeas, 0 Nays
02/06/06 HOUSE Now in Judiciary Appropriations

Assigned Folder(s)

MAS WEB CDO

Priority/Position

N/A

Compare

HB 0957	Relating to Homeowners' & Community Associations...	Anderson	02/01/06
SB 0546	Relating to Homeowner's Associations...	Fasano	12/14/05
HB 0839	Relating to Homeowners' Associations...	Kottkamp	01/24/06

HB 0543 Relating to Condominiums Goodlette 02/01/06
Condominiums; substantially revises provisions re termination of condominium form of ownership of property; waives certain notice requirements following natural disasters; provides requirements for plan of termination; provides powers & duties of termination trustee; provides procedure for contesting plan of termination; provides rules for distribution of property & sale proceeds; allows creation of another condominium by trustee, etc. Amends 718.117. EFFECTIVE DATE: 07/01/2006.
12/19/05 HOUSE Filed
01/10/06 HOUSE Referred to Civil Justice; Business Regulation; Justice Council
01/13/06 HOUSE On Committee agenda - Civil Justice, 01/25/06, 9:30 am, 24-H
01/25/06 HOUSE Favorable with CS by Civil Justice; 6 Yeas, 0 Nays
02/01/06 HOUSE Now in Business Regulation

Assigned Folder(s)

CDO

Priority/Position

N/A

Similar

SB 1556	Relating to Condominiums...	Geller	01/25/06
---------	-----------------------------	--------	----------

SB 0546 Relating to Homeowner's Associations Fasano 12/14/05
Homeowner's Associations; authorizes certain associations to revive lapsed covenants; revises notice requirements re levy of special assessments; prohibits fine levied by association from becoming lien unless governing documents claimed to have been violated are recorded in public records; provides that certain mergers or consolidations do not alter specified voting interests; amends provision re publication of false or misleading info., etc. Amends Chs. 712, 720, 34. EFFECTIVE DATE: 07/01/2006.
11/01/05 SENATE Filed
12/14/05 SENATE Referred to Regulated Industries; Community Affairs; Judiciary

Assigned Folder(s)

MAS WEB CDO

Priority/Position

N/A

Compare

HB 0391	Relating to Community Associations...	Domino	02/06/06
---------	---------------------------------------	--------	----------

Similar

HB 0957	Relating to Homeowners' & Community Associations...	Anderson	02/01/06
---------	---	----------	----------

SB 0586 Relating to Condo Associations/Unpaid Assessment Siplin 12/14/05
Condo Associations/Unpaid Assessment; provides that lien foreclosure action or action to recover money judgment brought as result of unpaid condominium association assessments may be brought only in instances meeting monetary threshold; provides that association is not entitled to recover attorney's fees in foreclosure actions or in actions to recover money judgment brought as result of unpaid association assessments, etc. Amends 718.116. EFFECTIVE DATE: 07/01/2006.
11/04/05 SENATE Filed
12/14/05 SENATE Referred to Regulated Industries; Judiciary

Assigned Folder(s)

MAS WEB CDO

Priority/Position

N/A

HB 0839 Relating to Homeowners' Associations Kottkamp 01/24/06
Homeowners' Associations; revises powers & duties of said associations; requires certain associations to be incorporated in this state; prohibits officers & directors from taking any action that is inconsistent with declaration of covenants; prohibits associations from restricting member's freedom of association & from limiting number of guests member may have within 24-hour period, etc. Amends 720.303, 307, 308. EFFECTIVE DATE: 07/01/2006.
01/24/06 HOUSE Filed

Assigned Folder(s)

CDO

Priority/Position

N/A

Compare

HB 0391	Relating to Community Associations...	Domino	02/06/06
---------	---------------------------------------	--------	----------

HB 0957 Relating to Homeowners' & Community Associations Anderson 02/01/06
Homeowners' & Community Associations; authorizes certain associations to revive lapsed covenants; revises notice requirements re levy of special assessments; prohibits fine levied by association from becoming lien unless governing documents claimed to have been violated are recorded in public records; provides that certain mergers or consolidations do not alter specified voting interests, etc. Amends Ch. 720, 718.114, 34.01; creates 712.11. EFFECTIVE DATE: 07/01/2006.
02/01/06 HOUSE Filed

Assigned Folder(s)

CDO

Priority/Position

N/A

Compare

HB 0391	Relating to Community Associations...	Domino	02/06/06
---------	---------------------------------------	--------	----------

Similar

SB 0546	Relating to Homeowner's Associations...	Fasano	12/14/05
---------	---	--------	----------

SB 1270 Relating to Advisory Council on Condominiums Margolis 02/07/06
Advisory Council on Condominiums; requires that council review certain provisions re protections for purchasers of condominium conversions; requires report to Legislature. EFFECTIVE DATE: Upon becoming law.
01/06/06 SENATE Filed
01/31/06 SENATE Referred to Regulated Industries; Judiciary
02/07/06 SENATE On Committee agenda - Regulated Industries, 02/14/06, 2:00pm, 110-S

Assigned Folder(s)

CDO

Priority/Position

N/A

SB 1556**Relating to Condominiums****Geller****01/25/06**

Condominiums; substantially revises provisions re termination of condominium form of ownership of property; waives certain notice requirements following natural disasters; provides requirements for plan of termination; provides powers & duties of termination trustee; provides procedure for contesting plan of termination; provides rules for distribution of property & sale proceeds; allows creation of another condominium by trustee, etc. Amends 718.117. EFFECTIVE DATE: 07/01/2006.

01/25/06 SENATE Filed

Assigned Folder(s)

CDO

Priority/Position

N/A

Similar

HB 0543

Relating to Condominiums...

Goodlette

02/01/06

Sponsor(s)

by Domino CS Sponsors: Civil Justice

Summary

General Community Associations; provides for revival of certain declarations that have extinguished; requires holder of recorded mortgage on condominium unit that requires consent or joinder of mortgagee to amendment to provide certain info. to condominium association; requires notice re proposed amendments to mortgagees; revises governing provisions re corporations not for profit that operate residential homeowners' associations, etc. Amends Ch. 720, 718.110; creates 712.11. EFFECTIVE DATE: 07/01/2006 except as otherwise provided.

Actions

Date	Chamber	Action
11/15/05	HOUSE	Filed
12/28/05	HOUSE	Referred to Civil Justice; Justice Appropriations; Justice Council
12/30/05	HOUSE	Now in Civil Justice
01/13/06	HOUSE	Original references removed: Justice Appropriations; Referred to Civil Justice; Judiciary Appropriations; Justice Council; On Committee agenda - Civil Justice, 01/25/06, 9:30 am, 24-H
01/25/06	HOUSE	Favorable with CS by Civil Justice; 6 Yeas, 0 Nays
02/06/06	HOUSE	Now in Judiciary Appropriations



Compare Bills

SB 0546 - Relating to Homeowner's Associations by Fasano

HB 0839 - Relating to Homeowners' Associations by Kottkamp

HB 0957 - Relating to Homeowners' & Community Associations by Anderson

Bill Text and Filed Amendments

Bill Number	Date	Action
 H 0391	11/14/05	
└ Amendment 1	01/25/06	Adopted
└ Amendment 2	01/25/06	Adopted
└ Amendment 3	01/25/06	Adopted
└ Amendment 4	01/25/06	Adopted
└ Amendment 5	01/25/06	Adopted
└ Amendment 6	01/25/06	Withdrawn
└ Amendment 7	01/25/06	Adopted
└ Amendment 8	01/25/06	Adopted
└ Amendment 9	01/25/06	Adopted
└ Amendment 10	01/25/06	Adopted
 H 0391C1	02/06/06	

No amendments to this bill text.

Staff Analysis

H 0391	Civil Justice
H 0391A	Civil Justice

Vote History

No vote history for this bill.




Related Documents

No related documents.

Statute Citations

712.11
 718.11
 720.302
 720.303
 720.306
 720.311
 720.405

Codes and Comments

Condominiums	Priority/Importance/Position	[ Edit Comments]
	Not top priority / Importance not specified / Position not specified	
Master	Priority/Importance/Position	[ Edit Comments]
	Not top priority / Importance not specified / Position not specified	
Web Site Folder	Priority/Importance/Position	[ Edit Comments]
	Not top priority / Importance not specified / Position not specified	

Analyst Comments

You have no analyst comments to this bill.

Generated on 02/08/06

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 391 CS Community Associations
SPONSOR(S): Domino
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N, w/CS	Blalock	Bond
2) Judiciary Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration of condominium may be amended as provided in the declaration. This bill provides that any provision in the declaration of condominium, articles of incorporation, or bylaws that requires the consent or joinder of mortgagees of condominium property in order to amend these documents is void. To the extent that this bill cannot make such provisions void, this bill provides notice procedures for consent or joinder by a mortgage holder.

A homeowners' association is a corporation responsible for the operation of a community in which voting membership is made up of parcel ownership and in which membership is mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. This bill increases the regulation of homeowners' associations and establishes conformity in the laws regulating homeowners' associations and condominium associations by:

- Revising the requirements for the inspection and copying of records;
- Revising what must be included in the associations' annual budget;
- Revising the financial reporting requirements; and
- Providing for guarantees of common expenses when they are not included in the declaration.

This bill also eliminates mediation of disputes between homeowners' associations and members from the jurisdiction of the Department of Business of Professional Regulation. The mandatory mediation of such disputes will have to be conducted by private mediators.

This bill appears to have a minimal negative fiscal impact on state revenues. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -- This bill eliminates the current requirement that certain disputes between homeowners and homeowners associations be referred to the Department of Business and Professional Regulation for assignment of a mediator.

Safeguard Individual Liberty -- This bill decreases restrictions on condominium associations when amending declarations of condominium, articles of incorporation, or bylaws. This bill increases regulation of homeowners' associations.

B. EFFECT OF PROPOSED CHANGES:

Background

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements".¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is like a constitution in that it:

strictly governs the relationships among condominium units owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.³

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.⁴ A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of two-thirds of the units.⁵

Homeowners' association means a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and in which membership is mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.⁶ Homeowners' associations are regulated under chapter 720, F.S.

Effect of Bill

Covenant Revitalization

This bill creates s. 712.11, F.S., to provide that a homeowner's association that is not subject to chapter 720 may use the procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of chapter 712, F.S.

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grand View at Emerald Hills*, 861 So.2d 494, 496-497 (Fla. 4th DCA 2003)

⁴ Section 718.104(5), F.S.

⁵ Section 718.110(1)(a), F.S.

⁶ Section 720.301(9), F.S.

Mortgagee Consent or Joinder of Amendments to Declaration of Condominium

Section 718.110(11), F.S., provides that any declaration of condominium recorded after April 1, 1992, may not require the consent or joinder of mortgagees in order for an association to pass an amendment to the declaration. This is limited to amendments which do not materially affect the rights or interests of the mortgagees, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. Current law provides that such consent may not be unreasonably withheld. In the event mortgagee consent is provided other than by properly recorded joinder, such consent must be evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded.⁷

This bill amends s. 718.110(11), F.S., to provide that any provision in the declaration of condominium, articles of incorporation, or bylaws that requires the association to obtain consent or joinder of mortgagees to amend the declaration of condominium, articles of incorporation, or bylaws are void. This provision is not limited to amendments materially affecting the rights or interests of the mortgagees, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. This bill also provides that consent or joinder are not to be unreasonably withheld, and that it is presumed that amendments to the declaration of condominium, articles of incorporation, or bylaws do not materially affect the rights or interests of mortgagees.

This bill provides findings by the Legislature that consent or joinder to amendments that do not materially affect the rights or interests of mortgagees is unreasonable and is a substantial burden on the condominium owners and association. This bill also provides that there is a compelling state interest in enabling condominium association members to approve amendments.

This bill provides that any holder of a mortgage on any portion of a condominium, which is recorded after October 1, 2006, and where the declaration of condominium, articles of incorporation, or bylaws require consent or joinder of a mortgagee to pass an amendment, must provide written notice by certified mail to the association of the address where the mortgagee may be contacted in regard to any proposed amendments.

The association must keep the names and addresses of the mortgagees, which the association must use when sending a request for such consent or joinder. A request for consent or joinder must be mailed to a mortgagee by certified mail to the address provided by the mortgagee. For a mortgage recorded after October 1, 2006, consent to an amendment is deemed to have been given by a holder of a mortgage who fails to provide the required written notice and consent information. In addition, any mortgagee who fails to respond by certified mail within 30 days after the date the association mails a request for consent or joinder is deemed to have consented to the proposed amendment.

For mortgages in existence prior to October 1, 2006, and where consent or joinder is required for amendments, and where mortgagees are not required to provide notice to the association of their contact information in order to be eligible to receive notices regarding proposed amendments, associations can modify provisions in the declaration of condominium, articles of incorporation, or bylaws. The Association must notify all mortgagees who have mortgages on any part of the condominium and mortgagees must provide the same contact information as for mortgages that are recorded after October 1, 2006. Any mortgagee who does not provide contact information as required will be deemed to have consented to all future proposed amendments. In addition, failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 30 days after the date that a request is sent to the mortgagee by certified mail is deemed to have consented to the amendment.

This bill provides that in order to properly notify holders of existing mortgages the condominium association conducts a diligent search to identify all existing mortgagees and an address for the

⁷ Section 718.110(11), F.S.
STORAGE NAME: h0391a.CJ.doc
DATE: 2/6/2006

required notice to be sent to each mortgagee. Service of the notice must be on the mortgagee's registered agent. Where there is no registered agent, the notice must be sent to the address in the original recorded mortgage unless there is a different address in a more recently recorded assignment or in the records maintained by the condominium association. All notices are sent by certified mail and if the mortgagee fails to provide the contact information requested within 30 days after the date of mailing of the letter from the association, then the mortgagee is deemed to have consented to the proposed amendment. A representative of the condominium association must execute an affidavit confirming that a diligent search was conducted to identify all outstanding mortgages on the condominium. The affidavit must summarize the steps that were taken in connection with the search and the notification of all mortgagees. The affidavit must be placed in the associations minute book as an attachment to the minutes of the meeting in which the board of directors considers the affidavit.

After October 1, 2006, no new declaration of condominium, articles of incorporation, or bylaws may require the consent or joinder of more than 51 percent of the eligible mortgagees in connection with any proposed amendment unless a higher percentage is required by the FNMA or FHLMC. A new declaration of condominium, articles of incorporation, or bylaws must also require mortgagees to provide to the condominium association the address to which notices may be sent, in order for the mortgagees to have the right to be contacted in connection with any proposed amendments.

This bill provides that a provision requiring consent or joinder of holders of mortgages is enforceable only by mortgagees of record as of the date an amendment is recorded and only by mortgagees who have complied with providing the notice and contact information as required above. Any amendment adopted without the required consent of a mortgagee is deemed voidable by any mortgagee who was entitled to notice and the opportunity to consent.

~~This bill also provides that in order to establish that a mortgagee is not unreasonably withholding consent, he or she must include in his or her reply to the condominium association's request for consent or joinder a statement of the specific reasons the proposed amendment is claimed to materially and adversely affect the rights and interests of such mortgagee.~~

~~In connection with any litigation between a condominium association and a lender with regard to whether consent has been unreasonably withheld, the prevailing party is entitled to recover his or her costs and reasonable attorney's fees.~~

Mixed-Use Condominiums

Section 718.404, F.S., pertains to mixed-use condominiums, which are condominiums where there are both residential and commercial units. Section 718.404(1), F.S., provides that for mixed-use condominiums, the owner of a commercial unit does not have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. Section 718.404(2), F.S., is also amended to provide that when the number of residential units is equal to or greater than 50% of the total number of units operated by the association, owners of the residential units are entitled to vote for a majority of the seats on the board of administration.

This bill amends subsections (1) and (2) of s. 718.404, F.S., to provide that these subsections are intended to be applied retroactively as a remedial measure.

Homeowners' Associations

Current law regulates homeowner associations in ch. 720, F.S., and s. 720.302, F.S., provides that ch. 720, F.S. does not apply to condominium associations. This bill amends s. 720.302, F.S., to provide an exception to the current law providing that chapter 720, which regulates homeowners' associations, does not apply to condominium associations.

This bill amends s. 720.302(4), F.S. to provide that ch. 720, F.S. does not apply to any association regulated under chapters 718 (condominiums), 719 (cooperatives), 721 (timeshares), or 723 (mobile home parks), except to the extent that a provision of ch. 718, 719, or 721, F.S. is expressly incorporated into ch. 720, F.S. for the purpose of regulating homeowners' associations.

This bill amends s. 720.302(5), F.S., to remove the phrase "not for profit" to conform to the other changes in this section. This bill also amends s. 720.302(5), F.S., to provide that corporations operating residential homeowners' associations in Florida are to be governed by and subject to ch. 607, F.S. (corporations), if the association was incorporated under the provisions of that chapter, or to ch. 617, F.S. (not for profit corporations), if the association was incorporated under the provisions of that chapter.

Homeowners' Association Board Meetings

Section 720.303(2), F.S., provides procedures for association board meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. Board meetings are open to all members, except for those meetings between the board and its attorney relating to proposed or pending litigation. Members also have the right to attend all board meetings and speak on any matter on the agenda for at least 3 minutes.

Notice of a board meeting must be posted in a conspicuous place in the community at least 48 hours prior to a meeting, except in an emergency. If notice of the board meeting is not posted in a conspicuous place, then notice of the board meeting must be mailed or delivered to each association member at least 7 days prior to the meeting, except in an emergency. For associations that have more than 100 members, the bylaws may provide for a reasonable alternative to this posting or mailing requirement. These alternatives include publication of notice, provision of a schedule of board meetings, conspicuous posting and repeated broadcasting of a notice in a certain format on a closed-circuit cable television system serving the association, or electronic transmission if the member consents in writing to such transmission.⁸

A board may not levy assessments at a meeting unless the notice of the meeting includes the nature of those assessments and a statement that the assessments will be considered at the meeting.⁹

Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This also applies to meetings of any committee or similar body when a final decision will be made regarding the spending of association funds. Proxy voting or secret ballots are also not allowed when a final decision will be made on approving or disapproving architectural decisions with respect to a specific parcel of residential property owned by a member of the community.¹⁰

This bill amends s. 720.303(2), F.S., as amended by section 18 of chapter 2004-345 and section 135 of chapter 2005-2, Laws of Florida,¹¹ as follows:

This bill amends s. 720.303(2)(a), F.S., to provide that provisions of this subsection also apply to the meetings of any committee or other similar body when a final decision is made regarding the spending of association funds and to meetings of any body vested with the power to approve or disapprove

⁸ Section 720.303(2)(c)1, F.S.

⁹ Section 720.303(2)(c)2, F.S.

¹⁰ Section 720.303(2)(c)3, F.S.

¹¹ In 2004 the Legislature passed SB 1184, which amended s. 720.303(2), F.S., in section 2 and section 18 of the bill. In 2004, the Legislature passed SB 2984, which also amended s. 720.303(2), F.S., in section 15 of the bill. This bill is amending s. 720.303(2), F.S., as amended by section 18 of chapter 2004-345 and section 135 of chapter 2005-2, Laws of Florida, and is repealing s. 720.303(2), F.S., as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida.

architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

This bill amends s. 720.303(2)(c)1., F.S. to change the phrase "for communities with more than 100 members" to the more accurate phrase "for communities with more than 100 parcels". This bill also amends s. 720.303(2)(c)1., F.S., to remove the requirement that the agenda be broadcast along with the notice when broadcast notice of a board meeting is provided.

This bill amends s. 720.303(2)(c)2., F.S., by changing the word "assessment" to "special assessment". This bill eliminates the provision that an assessment may not be levied at a board meeting unless notice of a board meeting states that regular assessments will be considered. This bill provides that such notice is only required when a special assessment will be considered.

This bill amends s. 720.303(2)(c)3., F.S., to provide that directors may vote by proxy or by secret ballot during meetings of any committee or other similar body when a final decision will be made regarding the spending of association funds, and when any body is vested with the power to approve or disapprove architectural decisions.

This bill also repeals s. 720.303(2), F.S., as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida, to remove conflicting versions of this subsection.

Homeowners' Association Inspection and Copying of Records

Section 720.303(5), F.S., requires that a homeowners' association allow its members to inspect and copy its official records within 10 days of a written request for access. A failure to comply with such a request in a timely fashion creates a rebuttable presumption that the association failed to do so, and entitles the requesting party to actual damages, or to a minimum of \$50 per calendar day, commencing on the eleventh business day. A homeowners' association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not impose a requirement that a parcel owner demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including without limitation, the costs of copying. The association may charge up to 50 cents per page for copies made on the associations copy machine. If the association does not have a copy machine available where the records are kept, or if the records requested to be copied exceed 25 pages, then the association may have copies made by an outside vendor and may charge the actual cost of copying.

Current law expressly exempts the following from inspection by a member or parcel owner: any record protected by attorney-client or work-product privilege; information obtained in association with the lease, sale or transfer of a parcel that is otherwise privileged by state or federal law; disciplinary, health, insurance and personnel records of the association's employees; or medical records of parcel owners or other community residents.¹²

This bill amends s. 720.303(5), F.S., to provide that an association or its agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association unless required by this chapter to be made available or disclosed. This bill also provides that an association or agent may charge a reasonable fee to a prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information, except for information required by law. The fee cannot exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

This bill provides that an association and its agent are not liable for providing information in good faith if the person providing the information includes a written statement in the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

Homeowners' Association Budgets

Section 720.303(6), F.S., provides that an association must prepare an annual budget. This bill amends s. 720.303(6), F.S., to require that the annual budget set out the annual operating expenses.

This bill also amends 720.303(6), F.S., to provide that the annual budget must include reserve accounts for capital expenditures and deferred maintenance, in addition to annual operating expenses. This bill provides that these accounts must provide for items such as roof replacement, building painting, and pavement resurfacing, and for any other item for which the expense or cost is more than \$10,000. This subsection does not apply to a budget where a majority of the members of an association have voted to provide no reserves or fewer reserves required by this subsection. This bill also provides that prior to turning over control of an association to the unit owners, the developer may vote to waive or reduce the reserves for the first 2 fiscal years of the association's operation. After this time, reserves can be waived or reduced by a majority vote of all nondeveloper voting interests at an association meeting.

This bill amends s. 720.303(6) to provide for how the reserve accounts will be funded. This bill provides for funding formulas for reserves and requires that the funding formulas be based on either a separate analysis of each required asset, or a pooled analysis of two or more required assets.¹³ This bill also provides that reserve funds and any interest accruing must stay in the reserve account, and can only be used for reserve expenditures unless another use is approved by a majority vote of the association members.

The language used in this section of the bill to amend 720.303(6), F.S. is identical in form to the language used in s. 718.112(2)(f), F.S. regarding the annual budgets of condominium associations.

Homeowners' Association Financial Reporting

Section 720.303(7), F.S., requires homeowners' associations to prepare an annual financial report within 60 days after the close of the fiscal year. The association must provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

This bill amends s. 720.303(7), F.S., to increase from 60 to 90 days the time that an association has to prepare and complete an annual financial report after the close of the fiscal year. Within 21 days after the final financial report is completed by the association, but no later than 120 days after the end of the fiscal year, the association must provide each member with a copy of the annual financial report. Homeowners' associations and condominium associations are generally operated and managed the same way, and the language used in this bill is identical in form to language contained in s. 718.111(13), F.S., regarding financial reporting for condominium associations.

This bill amends s. 720.303(7)(a), F.S., to provide that financial statements are to be completed in accordance with the accounting principles adopted by the Florida Board of Accountancy.

¹³ Required assets are the assets that this bill requires to be included in the reserve accounts including, but not limited to, roof replacement, building painting, pavement resurfacing, and any item for which maintenance expense or replacement cost exceeds \$10,000.

Attorney's Fees for Actions Between an Association and a Member

Section 720.305, F.S., provides that an action to enforce the rules and provisions established by the homeowners' association can be brought by the association or by any member against the association, a member, any director of the association, and any tenants, guests, or invitees occupying a parcel or common area. This section also provides that the prevailing party in any litigation is entitled to recover reasonable attorney's fees and costs. A member that has successfully sued his or her association must, under current law, return a portion of those fees back to the association. Thus, under current law a member cannot be fully compensated for his or her attorney's fees.

This bill amends s. 720.305, F.S., to provide that any member who prevails against an association and is awarded attorney's fees may also be awarded an amount sufficient to cover the member's pro-rata portion of those fees.

Meetings of Association Members; Amendments

Section 720.306(1)(c), F.S., provides that an amendment may not materially and adversely alter the proportionate voting interest attached to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association, unless all owners and lienholders join in the execution of the amendment. A change in quorum requirements is not an alteration of voting interests.

Section 720.306(6), F.S., provides that members and parcel owners have the right to attend all membership meetings and to speak at any meeting. A member and a parcel owner have the right to speak for at least 3 minutes on any agenda item, if the member or parcel owner submits a written request to speak prior to the meeting.

This bill amends s. 720.306(1)(c), F.S., adding the provision that the merger or consolidation of associations under ch. 607, F.S. (regulating corporations) or ch. 617, F.S. (regulating non-profit corporations), is not considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

This bill also amends s. 720.306(6), F.S., removing the phrase "opened for discussion". This change provides that members and parcel owners have the right to speak at any meeting with reference to all items on the agenda and not to all items opened for discussion or on the agenda.

Transition of Homeowners' Association Control

Section 720.307, F.S., provides procedures for turning over control of an association from the developer to parcel owners. The transition of association control begins with the election of the board of directors of the homeowners' association by the members. At the time the members elect the board of directors, the developer must deliver various documents to the board.

This bill amends s. 720.307, F.S., to provide an additional document that the developer must provide to the board of directors. Along with the documents that must be provided by the developer under current law, this bill requires that the developer to also provide the board of directors the financial records, including the statements of the association, and source documents from the incorporation of the association through the date of turnover. This bill also provides that an independent certified public accountant must audit the records and determine that the developer was charged with, and paid, the proper amounts of assessments.

The language in this section of the bill is taken from language found in s. 718.301(4)(c), F.S., of the condominium Act. The current law for homeowners' associations pertaining to transition of association control is very similar to the current condominium act and this bill provides conformity between the homeowners' associations and the condominium associations.

Guarantees of Common Expenses

The developer of a community is responsible for paying the costs of the common expenses of the community until the sale of the parcels to a purchaser in which time the developer pays a proportionate share of the common expenses with the parcel owners. Condominium law allows a developer to be excused from payment of common expenses if the common expenses of all unit owners are guaranteed not to increase and the developer agrees to pay all common expenses incurred but not covered by unit owner payments during the period of the guarantee.¹⁴

This bill amends s. 720.308, F.S., to incorporate the guarantees of common expenses provision found in condominium law into homeowners' association law. Currently, s. 720.308, F.S., provides for guarantees of common expenses if it is provided for in the declaration. This bill amends s. 720.308, F.S., to provide for guarantees of common expenses if a guarantee is not included in the purchase contract or declaration. This bill provides that a guarantee is effective only upon approval of a majority of the voting interests of the members other than the developer. This bill also provides that:

- The time period of a guarantee must have a specific beginning and ending date or event;
- The dollar amount of the guarantee must be an exact dollar amount for each parcel identified in the declaration;
- The cash payments required from the developer must be when the revenue collected by the association are not sufficient to provide payment for all common expenses; and
- The expenses incurred in the production of non-assessment revenues, not in excess of the non-assessment revenues, must not be included in the common expenses. If expenses attributable to non-assessment revenues exceed non-assessment revenues, then the developer must only fund the excess expenses.

This section of the bill mirrors what is currently contained in s. 718.116(9)(a)2, F.S., of the condominium Act and provides conformity between condominium associations and homeowners' associations.

Dispute Resolution

The Legislature recognized the role of alternative dispute resolution in reducing court dockets and trials and offering a more efficient, cost effective alternative to litigation. Section 720.311, F.S., established dispute resolution procedures for homeowners' associations and their members. Current law requires that recall disputes must be resolved by binding arbitration conducted by the Department of Business and Professional Regulation (department). Any recall dispute filed with the department must be conducted in accordance with the provisions of ss. 718.1255 and 718.112(2)(j), F.S., which establish requirements and procedures for the removal of condominium directors, and dispute resolution procedures for condominiums. Section 718.1255, F.S., requires that arbitration proceedings relating to the recall of a condominium director must be conducted pursuant to the arbitration procedures in s. 718.1255, F.S., and provides that, if the condominium association fails to comply with the final order of arbitration, the department may take action pursuant to s. 718.501, F.S. Section 718.501, F.S., establishes the powers and duties of the department, which include the power to conduct investigations, issue orders, conduct consent proceedings, bring actions in civil court on behalf of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution, and to assess civil penalties.

Section 720.311(1), F.S., provides that the department must conduct mandatory binding arbitration of election disputes in accordance with s. 718.1255, F.S. Election and recall disputes are not eligible for mediation. Current law requires a \$200 filing fee, and authorizes the department to assess the parties an additional fee in an amount adequate to cover the department's costs and expenses. The fee paid to the department must be a recoverable cost in the arbitration proceeding and the prevailing party must

¹⁴ Section 718.116, F.S.

be paid its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator. Section 720.311(1), F.S., provides that any petition for mediation or arbitration shall toll the applicable statute of limitations. The statute authorizes the department to adopt rules to implement this section.

Section 720.311(2)(a), F.S., provides that the following disputes must be filed with the department for mandatory mediation by the division before the dispute is filed in court:

- Disputes between an association and a parcel owner regarding use of, or changes to, the parcel or the common areas and other covenant enforcement disputes;
- Disputes regarding amendments to the association documents;
- Disputes regarding meetings of the board and committees appointed by the board;
- Disputes regarding membership meetings not including election meetings; and
- Disputes regarding access to the official records of the association.

The mediation is conducted under the applicable Florida Rules of Civil Procedure, and the proceeding is privileged and confidential to the same extent as court-ordered mediation. Current law provides that persons not a party to the suit may not attend the mediation conference without the consent of all the parties. Current law also requires a \$200 fee to defray the costs of the mandatory mediation, authorizes the department to charge additional fees to cover the costs of the mandatory mediation, and requires that the parties share the costs of mediation equally, unless the parties agree otherwise. If the mandatory mediation is not successful, the parties may file the dispute in a court or enter the dispute into binding or non-binding arbitration to be conducted by the department or private arbitrator. Section 720.311(2)(d), F.S., provides that the mediation procedure may be used by non-mandatory homeowners' associations.

Section 720.311(2)(c), F.S., provides standards to division certification and training of mediators and arbitrators, and division certified mediators must also be certified by the Florida Supreme Court.

Section 720.311(3), F.S., requires that the division develop an education program to assist homeowners' associations and their members and officers regarding the operation of homeowners' associations under chapter 720, F.S.

Section 720.311(d), F.S., provides that the department must develop an education program to assist homeowners, associations, board members, and managers in understanding the use of alternative dispute resolution techniques in resolving disputes between parcel owners and associations or between owners. Current law also provides that the certification program for arbitrators and mediators and the education program for homeowners' associations and their members would be funded by moneys and filing fees generated by the arbitration and mediation proceedings.

This bill amends s. 720.311, F.S., to provide:

- That all references to mediation be changed to "presuit" mediation;
- That disputes subject to presuit mediation do not include the collection of any assessments, fine, or other financial obligation, including attorney's fees and costs, or any action to enforce a prior mediation settlement;
- That the presuit mediation requirements of s. 720.311, F.S., do not apply to any dispute where emergency relief is required;
- A form for the written offer to participate in presuit mediation that must be substantially followed by the aggrieved party and which is served on the responding party. The form is titled "Statutory Offer To Participate In Presuit Mediation" and is a boilerplate form that a party must use or substantially follow when making an offer to participate in presuit mediation. The form provides that the party may waive presuit mediation so that this matter may proceed directly to court;
- That service of the statutory offer is effected by sending the statutory form, or a letter that conforms substantially to the statutory form, by certified mail, with an additional copy being sent

- regular first-class mail, to the address of the responding party as it appears on the books and records of the association;
- That dispute resolution to resolve disputes between associations and a parcel owner is no longer within the jurisdiction of the Department of Business and Professional Regulation. This bill removes all provisions that reference the department found in s. 720.311, F.S.;
- That the responding party will have 20 days from the date the offer is mailed to serve a response in writing. The response is to be served by certified mail, with an additional copy being sent by regular first-class mail to the address shown on the offer;
- That the mediator may require advance payment of fees and costs. This bill removes the \$200 filing fee requirement, and other language providing for the fees for a department mediator.
- That failure of either party to appear for mediation, respond to the offer, agree on a mediator, or pay the fees and costs will entitle the other party to seek an award of the costs and fees associated with mediation;
- That if presuit mediation cannot be conducted within 90 days after the offer to participate then an impasse will be deemed unless both parties agree to extend the deadline;
- That any issue or dispute that is not resolved at presuit mediation, the prevailing party in any subsequent arbitration or litigation proceeding shall be entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process.

C. SECTION DIRECTORY:

Section 1 creates s. 712.11, F.S., to provide that homeowners' associations may use procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of Chapter 712, F.S.

Section 2 amends s. 718.110, F.S., providing for certain procedures for amending declarations of condominium, articles of incorporation, or bylaws, where the declarations of condominium, articles of incorporation, or bylaws requires the association to obtain consent and joinder of mortgagees.

Section 3 amends s. 718.404, F.S., to provide that subsections (1) and (2) are intended to be applied retroactively as a remedial measure.

Section 4 amends s. 720.302, F.S., to provide an exception to the current law that ch. 720, F.S., does not apply to any association under ch. 718, F.S., ch. 719, F.S., or ch. 721, F.S.

Section 5 amends s. 720.303, F.S., to provide that provisions under 720.303(2), F.S. also apply to committee meetings when a decision will be made on spending association funds, and to meetings of any body that has the power to make architectural decisions. This section also amends 720.303(5), F.S., to provide for when an association is not required to provide information about the residential subdivision or the association, that the association may charge a fee up to \$500 for providing this information, and for when an association is not liable for providing such information. This section amends 720.303(7), F.S., revising the time period for when an association must prepare and complete a financial report for the preceding fiscal year. This section amends s. 720.303(6), F.S., requiring the annual budget of an association to set out the annual operating expenses and include reserve accounts for capital expenditures and deferred maintenance.

Section 6 repeals s. 720.303(2), F.S.

Section 7 amends s. 720.305, F.S., to provide that a member who prevails in an action against an association may recover additional amounts for his or her member share of the assessment that she will have to pay for the associations legal fees and costs.

Section 8 amends s. 720.306, F.S., revising provisions pertaining to meetings of members and amendments providing that merger or consolidation of associations is not considered a material or

adverse alteration of the proportionate voting interest appurtenant to a parcel, and providing that members and parcel owners have the right to speak at any meeting in reference to all agenda items.

Section 9 amends s. 720.307, F.S., to require that at the time the members are entitled to elect at least a majority of the board of directors the developer must deliver the financial records of the association.

Section 10 amends s. 720.308, F.S., to establish guarantees of common expenses if a guarantee is not included in the purchase contract or declaration.

Section 11 amends s. 720.311, F.S., revising the dispute resolution provisions for disputes between an association and a parcel owner. This section removes all references to the Department of Business and Professional Regulation. This section also provides a statutory form to be used as the written offer to participate in presuit mediation, and provides that service of the offer be accomplished by sending the offer in a certain manner.

Section 12 provides an effective date of July 1, 2006, except as otherwise expressly provided in this bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Business and Professional Regulation estimates that this bill will have a recurring negative fiscal impact as follows:¹⁵

	FY 2006-07	FY 2007-08	FY 2008-09
License Fees:	0	0	0
Taxes:	0	0	0
Other (identify): Mediation Fees	(126,018)	(126,018)	(126,018)
TOTAL:	(126,018)	(126,018)	(126,018)

2. Expenditures:

Non-Recurring Effects	FY 2006-07	FY 2007-08	FY 2008-09
Operating Capital Outlay	0	0	0
Other Personal Services	0	0	0
Other (identify)	0	0	0
Subtotal	0	0	0

Non-Operating Expenditures	FY 2006-07	FY 2007-08	FY 2008-09
Service Charges (to General Revenue)	(9,199)	(9,199)	(9,199)
Other Indirect Costs	0	0	0
Subtotal	(9,199)	(9,199)	(9,199)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁵ The fiscal impact on state government was provided by Matilde Phillips of the Department of Business and Professional Regulation on January 27, 2006.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may allow increased costs to purchasers or sellers of homes that are in a homeowners association. The fee cannot exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

It is unclear whether this bill will increase or decrease the cost to homeowners and homeowners associations relating to mediation of disputes. Under current law, such disputes are mediated by the Department of Business and Professional Regulation for \$200. This bill eliminates the \$200 fee, but requires private mediation at a cost to be negotiated between the parties.

D. FISCAL COMMENTS:

The fiscal comment provided by the Department of Business and Professional Regulation indicate that mediation of homeowners' association disputes currently requires 2.0 FTE's. This bill eliminates the need for those 2.0 FTE's, but the department's fiscal analysis does not account for this reduction. The department claims that the 2.0 FTE's are employees assigned to condominium regulation who will return to condominium regulation should this bill pass.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, Section 10 of the Florida Constitution provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."¹⁶ "A statute contravenes the constitutional prohibition against impairment of contracts when it has the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts."^{17 18}

The Supreme Court of Florida in *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979) held that laws impairing contracts can be unconstitutional if they unreasonably and unnecessarily impair the contractual rights of citizens.¹⁹ The *Pomponio* Court indicated that the "well-accepted" principle in this state is that virtually no degree of contract impairment is tolerable in this state." *Pomponio*, 378 So. 2d at 780. When seeking to determine what level of impairment is constitutionally permissible, a court "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy." *Id.*

In other words, "[t]his method requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power." *U.S. Fidelity and Guar. Co. v. Department of Ins.*, 453 So. 2d 1355, 1360-61 (1984). What should be reviewed when considering this balancing test?

¹⁶ Article 1, Section 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts"

¹⁷ 10a Fla. Jur. s. 414, Constitutional Law.

¹⁸ The term impair is defined as "to make worse; to diminish in quantity, value, excellence, or strength; or to lessen in power or weaken." 10a Fla. Jur. s. 414, Constitutional Law.

¹⁹ The Florida Supreme Court has adopted the method of analysis from the United States Supreme Court in cases involving the contract clause. *Pomponio*, 378 So. 2d at 780.

[T]he United States Supreme Court recently outlined the main factors to be considered in applying this balancing test. The threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. Total destruction of contractual expectations is not necessary for a finding of substantial impairment. On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. The Court long ago observed: One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation such as the remedying of a broad and general social or economic problem. Furthermore, since *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. One legitimate state interest is the elimination of unforeseen windfall profits. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests. Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption. Unless the State itself is a contracting party, as is customary in reviewing economic and social regulation, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

U.S. Fidelity and Guar. Co., 453 So.2d at 1360-61 (Fla. 1984) (internal citations and quotations omitted).

This bill amends s. 718.110, F.S., to provide that any provision in the declaration of condominium, articles of incorporation, or bylaws that requires consent or joinder of mortgagees to be obtained to pass an amendment to either of these documents "shall be void to the extent not limited to amendments materially affecting the rights or interests of the mortgagees". This bill could be interpreted as pertaining to all declarations, articles of incorporation, or bylaws that have consent or joinder requirements, existing before the effective date of the bill and after. This bill also provides that, for mortgages in existence prior to the effective date of this bill, associations can modify their declarations, articles of incorporation, or bylaws to require mortgagees to provide notice to the association of their contact information in order to be eligible to receive notices regarding proposed amendments.

A mortgage is a contract between a lender and a property owner. It is possible that a lender may have agreed to lend money to a condominium or community owner only if the lender would receive certain notifications and have the opportunity to object to amendments that could adversely affect the lender. To the extent that a lender relied on such provisions, this bill may affect the lender's ability to enforce such contract terms. If so, this bill may perhaps impair the obligation of a contract and this portion of the bill may not be enforced by a court.

There could also be some possible constitutional problems with the changes made in this bill to subsections (1) and (2) of s. 718.404, F.S. This bill amends this section to make these subsections apply retroactively. This could lead to contract clause violations if it were found to impair existing contracts.

B. RULE-MAKING AUTHORITY:

None. However, the bill may require the repeal of Ch. 61B-82, F.A.C., containing the mediation rules of procedure.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 25, 2006, the Civil Justice Committee adopted 9 amendments to this bill. The amendments made the following revisions to the bill:

- Provides for the use of accounting principles as adopted by the Florida Board of Accountancy.
- Provides that the annual budget of homeowners' associations include the annual operating expenses and reserve accounts for capital expenditures and deferred maintenance.
- Provides that complete financial records of homeowners' associations be included with the documents that the developer must deliver at the time the members of the association are entitled to elect at least a majority of the board of directors.
- Provides for guarantees of common expenses when a guarantee is not included in the purchase contract or declaration. The amendment provides for the guarantee time period, maximum level of assessments, cash funding requirements during the guarantee, calculations of guarantor's final obligation, and for funding of expenses incurred in the production of non-assessment revenues.
- Provides that any member who prevails against an association and is awarded attorney's fees may also be awarded an amount sufficient to cover the member's pro-rata portion of those fees.
- Provides that in s. 718.404, F.S., regarding mixed-use condominiums, the following provisions are intended to apply retroactively as a remedial measure: (1) In mixed-use condominiums, the commercial unit owner cannot veto condominium documents; and (2) Where there are 50% residential units, the residential owners are entitled to vote for a majority of the seats on the board of administration.
- Removes section 8 of the bill regarding requirements for proposed revived declarations and other governing documents.
- Removes the phrase "not for profit" from s. 720.302(5), F.S., regarding the purpose and scope of ch. 720, F.S., so that it is in conformity with other revisions in the bill.
- Changes the phrase "100 members" to the more correct "100 parcels"²⁰ in s. 720.303(2)(c)1., F.S.

The bill was then reported favorably with a committee substitute.

²⁰ This change was necessary because the use of members could vary if you had several members per parcel or if every parcel only had one member. By using 100 parcels, there is a determined set number that will not vary.

HB 391

2006
CS

CHAMBER ACTION

The Civil Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to community associations; creating s.
712.11, F.S.; providing for the revival of certain
declarations that have been extinguished; amending s.
718.110, F.S.; revising provisions relating to the
amendment of declarations; providing legislative findings
and a finding of compelling state interest; requiring a
holder of a recorded mortgage on a condominium unit that
requires the consent or joinder of a mortgagee to an
amendment to provide certain information to a condominium
association; providing definitions; providing criteria for
consent to an amendment; requiring notice regarding
proposed amendments to mortgagees; providing criteria for
notification; requiring the association to conduct a
diligent search to identify mortgagees; requiring the
association's representative to execute an affidavit
confirming that a diligent search was conducted;
prohibiting the declaration of condominium, articles of
incorporation, or bylaws from requiring the consent or

HB 391

2006
CS

24 joinder of more than a specified percent of the eligible
25 mortgagees in connection with proposed amendments under
26 certain conditions; providing criteria for enforcement;
27 requiring mortgagees seeking to disapprove a proposed
28 amendment to provide certain information to the
29 association; providing for the recovery of certain costs
30 and attorney's fees; amending s. 718.404, F.S.; providing
31 retroactive application of provisions relating to mixed-
32 use condominiums; amending s. 720.302, F.S.; revising
33 governing provisions relating to corporations that operate
34 residential homeowners' associations; amending s. 720.303,
35 F.S.; providing that special assessments may not be levied
36 at a board meeting except under certain circumstances;
37 revising provisions relating to the closed-circuit cable
38 broadcast notice requirement; authorizing the association
39 to charge a reasonable fee for providing good faith
40 responses to certain requests for information by or on
41 behalf of a prospective purchaser or lienholder; providing
42 conditions for exemption from liability for providing such
43 information; revising what must be included in an
44 association's annual budget; providing for reserve
45 accounts for capital expenditures and deferred
46 maintenance; revising when the association must have its
47 financial report completed and provided to members;
48 repealing s. 720.303(2), F.S., as amended, relating to
49 board meetings, to remove conflicting versions of that
50 subsection; amending s. 720.305, F.S.; providing that,
51 where a member is entitled to collect attorney's fees

HB 391

2006
CS

52 against the association, the member may also recover
53 additional amounts as determined by the court; prohibiting
54 an association from filing a foreclosure action against
55 homestead property; providing exceptions; tolling
56 applicable limitation periods; amending s. 720.306, F.S.;
57 providing that certain mergers or consolidations of an
58 association shall not be considered a material or adverse
59 alteration of the proportionate voting interest
60 appurtenant to a parcel; revising provisions relating to
61 items that members and parcel owners may address at
62 membership meetings; amending s. 720.307, F.S.; providing
63 additional documents that the developer must deliver at
64 the time the association members elect the board of
65 directors; amending s. 720.308, F.S.; providing for the
66 establishment of guarantees of common expenses shared by
67 association members; amending s. 720.311, F.S.; revising
68 provisions relating to dispute resolution; providing that
69 the filing of any petition for arbitration or the serving
70 of an offer for presuit mediation shall toll the
71 applicable statute of limitations; providing that certain
72 disputes between an association and a parcel owner shall
73 be subject to presuit mediation; revising provisions to
74 conform; providing that temporary injunctive relief may be
75 sought in certain disputes subject to presuit mediation;
76 authorizing the court to refer the parties to mediation
77 under certain circumstances; requiring the aggrieved party
78 to serve on the responding party a written offer to
79 participate in presuit mediation; providing a form for

HB 391

2006
CS

such offer; providing that service of the offer is effected by the sending of such an offer in a certain manner; providing that the prevailing party in any subsequent arbitration or litigation proceedings is entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process; requiring the mediator or arbitrator to meet certain certification requirements; removing a requirement relating to development of an education program to increase awareness of the operation of homeowners' associations and the use of alternative dispute resolution techniques; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 712.11, Florida Statutes, is created to read:

712.11 Covenant revitalization.--A homeowners' association not otherwise subject to chapter 720 may use the procedures set forth in ss. 720.403-720.407 to revive covenants that have lapsed under the terms of this chapter.

Section 2. Effective October 1, 2006, subsection (11) of section 718.110, Florida Statutes, is amended to read:

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.--

(11)(a) Notwithstanding any provision to the contrary contained in this section, any provision in the declaration of condominium, articles of incorporation, or bylaws that requires

HB 391

2006
CS

~~declaration recorded after April 1, 1992, may not require the~~
consent or joinder of some or all mortgagees of units or any
other portion of the condominium property to or in amendments to
the declaration of condominium, articles of incorporation, or
bylaws shall be void to the extent not, unless the requirement
~~is~~ limited to amendments materially affecting the rights or
interests of the mortgagees, or as otherwise required by the
Federal National Mortgage Association or the Federal Home Loan
Mortgage Corporation, and any consent or joinder shall unless
~~the requirement provides that such consent may not be~~
unreasonably withheld. It shall be presumed that, except as to
those matters described in subsections (4) and (8) or other
issues materially affecting the mortgagee's security interest in
the property, amendments to the declaration of condominium,
articles of incorporation, or bylaws do not materially affect
the rights or interests of mortgagees. In the event mortgagee
consent is provided other than by properly recorded joinder,
such consent shall be evidenced by affidavit of the association
recorded in the public records of the county where the
declaration of condominium, articles of incorporation, or bylaws
are is recorded.

(b) The Legislature finds that the procurement of
mortgagee consent or joinder to amendments that do not
materially affect the rights or interests of mortgagees is an
unreasonable and substantial logistical and financial burden on
the unit owners and condominium associations and that there is a
compelling state interest in enabling the members of a
condominium association to approve amendments. Accordingly, any

HB 391

2006
CS

holder of a recorded mortgage on a condominium unit or any other portion of a condominium, which mortgage is first recorded after October 1, 2006, and for which the declaration of condominium, articles of incorporation, or bylaws require the consent or joinder of a mortgagee to an amendment, must provide written notice by certified mail to the association of the address at which the mortgagee may be contacted in regard to any proposed amendments. The association shall maintain the names and addresses of such mortgagees in a registry of mortgagees, which the association shall utilize when sending a request for such consent or joinder. A request for consent or joinder must be mailed to a mortgagee by certified mail, return receipt requested, to the address provided by the mortgagee and retained in the registry of mortgagees. As used in this subsection, "certified mail" means either certified or registered mail, return receipt requested. Consent to an amendment shall be deemed to have been given by any holder of a mortgage that is first recorded after October 1, 2006, and who fails to provide the required written notice and contact information. Also, any mortgagee who fails to respond by certified mail within 30 days after the date the association mails a request for consent or joinder shall be deemed to have consented to the proposed amendment.

(c) As to mortgages in existence as of October 1, 2006, in those condominiums where the consent or joinder of such mortgagees is required in connection with amendments to the governing documents, and where such mortgagees are not otherwise required by the existing declaration of condominium, articles of

HB 391

2006
CS

164 incorporation, or bylaws to provide notice to the association of
165 their contact information in order to be eligible to receive
166 notices regarding proposed amendments, those condominium
167 associations that wish to modify provisions in the declaration
168 of condominium, articles of incorporation, or bylaws that
169 require the consent or joinder of mortgagees must notify all
170 mortgagees who hold mortgages on units within the condominium or
171 other portions of the condominium property of the need to
172 provide the same contact information as required in paragraph
173 (b). Any mortgagee who does not provide contact information as
174 required will be deemed to have consented to all future proposed
175 amendments. Further, once the proper address for notifying
176 existing mortgagees has been obtained in the manner provided for
177 in this subsection, failure of any mortgagee to respond to a
178 request for the consent or joinder to a proposed amendment
179 within 30 days after the date that such request is sent to the
180 mortgagee by certified mail shall be deemed to have consented to
181 such amendment. In order to properly notify holders of existing
182 mortgages:

183 1. The condominium association must first conduct a
184 diligent search to identify all existing mortgagees and an
185 address for the required notice to be sent to each mortgagee.
186 Service of the notice shall be on the mortgagee's registered
187 agent based upon the information available from the Secretary of
188 State. Where there is no registered agent, the notice shall be
189 sent to the address in the original recorded mortgage unless
190 there is a different address in a more recently recorded
191 assignment or modification instrument or in the records

HB 391

2006
CS

192 maintained by the condominium association. All notices must be
193 sent by certified mail and must advise the mortgagee that if he
194 or she fails to provide the contact information requested within
195 30 days after the date of mailing of the certified letter from
196 the association, such mortgagee shall be deemed to have
197 consented to the proposed amendment.

198 2. An affidavit must be executed by a representative of
199 the condominium association confirming that a diligent search
200 has been conducted to identify all outstanding mortgages on the
201 condominium in the manner provided for in subparagraph 1. and
202 summarizing the steps that were taken in connection with such
203 diligent search and the notification of all mortgagees, and such
204 affidavit shall be placed in the association's minute book as an
205 attachment to the minutes of the meeting in which the board of
206 directors considers such affidavit.

207 (d) After October 1, 2006, no new declaration of
208 condominium, articles of incorporation, or bylaws may require
209 the consent or joinder of more than 51 percent of the eligible
210 mortgagees in connection with any proposed amendment unless a
211 higher percentage is required in order to comply with the
212 requirements of the Federal National Mortgage Association or
213 Federal Home Loan Mortgage Corporation. Any new declaration of
214 condominium, articles of incorporation, or bylaws must also
215 require mortgagees to provide to the condominium association the
216 address to which notices may be sent, as provided for in
217 paragraph (b), in order for such mortgagees to have the right to
218 be contacted in connection with any proposed amendment.

HB 391

2006
CS

219 (e) A provision requiring the consent or joinder of some
220 or all holders of mortgages on units or other portions of the
221 condominium property to any proposed amendment shall be
222 enforceable only by mortgagees of record as of the date an
223 amendment is recorded in the public records and only by those
224 mortgagees who have complied with the requirements of paragraph
225 (b) or paragraph (c). Any amendment adopted without the required
226 consent of a mortgagee shall be deemed voidable by any mortgagee
227 who was entitled to notice and the opportunity to consent, and
228 actions to void such amendments shall be subject to the statute
229 of limitations applicable to actions founded upon written
230 instruments, which statute shall commence to run as of the date
231 such amendment is recorded in the public records and, for
232 amendments recorded prior to October 1, 2006, shall commence on
233 October 1, 2006.

234 (f) In order to establish that he or she is not
235 unreasonably withholding consent, any mortgagee who seeks to
236 disapprove of a proposed amendment by withholding his or her
237 consent or joinder must include in his or her reply to the
238 condominium association's request for consent or joinder a
239 statement of the specific reasons the proposed amendment is
240 claimed to materially and adversely affect the rights and
241 interests of such mortgagee.

242 (g) In connection with any litigation between a
243 condominium association and a lender with regard to whether
244 consent has been improperly or unreasonably withheld, the
245 prevailing party shall be entitled to recover his or her costs
246 and reasonable attorney's fees.

HB 391

2006
CS

Section 3. Subsections (1) and (2) of section 718.404, Florida Statutes, are amended to read:

718.404 Mixed-use condominiums.--When a condominium consists of both residential and commercial units, the following provisions shall apply:

(1) The condominium documents shall not provide that the owner of any commercial unit shall have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. This subsection shall apply retroactively as a remedial measure.

(2) Subject to s. 718.301, where the number of residential units in the condominium equals or exceeds 50 percent of the total units operated by the association, owners of the residential units shall be entitled to vote for a majority of the seats on the board of administration. This subsection shall apply retroactively as a remedial measure.

Section 4. Subsections (4) and (5) of section 720.302, Florida Statutes, are amended to read:

720.302 Purposes, scope, and application.--

(4) This chapter does not apply to any association that is subject to regulation under chapter 718, chapter 719, or chapter 721, or to any nonmandatory association formed under chapter 723, except to the extent that a provision of chapter 718, chapter 719, or chapter 721 is expressly incorporated into this chapter for the purpose of regulating homeowners' associations.

(5) Unless expressly stated to the contrary, corporations ~~not for profit~~ that operate residential homeowners' associations in this state shall be governed by and subject to chapter 607,

HB 391

2006
CS

if the association was incorporated thereunder, or to chapter 617, if the association was incorporated thereunder, and this chapter. This subsection is intended to clarify existing law.

Section 5. Subsections (2), (6), and (7) of section 720.303, Florida Statutes, as amended by section 18 of chapter 2004-345 and section 135 of chapter 2005-2, Laws of Florida, are amended, and paragraphs (d) and (e) are added to subsection (5) of that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.--

(2) BOARD MEETINGS.--

(a) A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. All meetings of the board must be open to all members except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(b) Members have the right to attend all meetings of the board and to speak on any matter placed on the agenda by petition of the voting interests for at least 3 minutes. The

HB 391

2006
CS

association may adopt written reasonable rules expanding the right of members to speak and governing the frequency, duration, and other manner of member statements, which rules must be consistent with this paragraph and may include a sign-up sheet for members wishing to speak. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the members is inapplicable to meetings between the board or a committee and the association's attorney, with respect to meetings of the board held for the purpose of discussing personnel matters.

(c) The bylaws shall provide for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to provide the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 parcels ~~members~~, the bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be

HB 391

2006
CS

broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice ~~and agenda~~ must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice ~~and the agenda~~. The bylaws or amended bylaws may provide for giving notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members; however, a member must consent in writing to receiving notice by electronic transmission.

2. A special ~~An~~ assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that special assessments will be considered and the nature of the special assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. ~~This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or~~

HB 391

2006
CS

~~disapprove architectural decisions with respect to a specific
parcel of residential property owned by a member of the
community.~~

(d) If 20 percent of the total voting interests petition the board to address an item of business, the board shall at its next regular board meeting or at a special meeting of the board, but not later than 60 days after the receipt of the petition, take the petitioned item up on an agenda. The board shall give all members notice of the meeting at which the petitioned item shall be addressed in accordance with the 14-day notice requirement pursuant to subparagraph (c)2. Each member shall have the right to speak for at least 3 minutes on each matter placed on the agenda by petition, provided that the member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the board is not obligated to take any other action requested by the petition.

(5) INSPECTION AND COPYING OF RECORDS.--The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages.

HB 391

2006
CS

(d) The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

(e) An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

(6) BUDGETS.--

(a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to

HB 391

2006
CS

415 the member. The copy must be provided to the member within the
416 time limits set forth in subsection (5).

417 (b) In addition to annual operating expenses, the budget
418 shall include reserve accounts for capital expenditures and
419 deferred maintenance. These accounts shall include, but are not
420 limited to, accounts for roof replacement, building painting,
421 and pavement resurfacing, regardless of the amount of deferred
422 maintenance expense or replacement cost, and for any other item
423 for which the deferred maintenance expense or replacement cost
424 exceeds \$10,000. The amount to be reserved shall be computed by
425 means of a formula that is based upon the estimated remaining
426 useful life and estimated replacement cost or deferred
427 maintenance expense of each reserve item. The association may
428 adjust replacement reserve assessments annually to take into
429 account any changes in estimates or extension of the useful life
430 of a reserve item caused by deferred maintenance. This
431 subsection does not apply to an adopted budget in which the
432 members of an association have determined, by a majority vote at
433 a duly called meeting of the association, to provide no reserves
434 or fewer reserves than required by this subsection. However,
435 prior to turnover of control of an association by a developer to
436 unit owners, the developer may vote to waive the reserves or
437 reduce the funding of reserves for the first 2 fiscal years of
438 the association's operation, beginning with the fiscal year in
439 which the initial declaration is recorded, after which time
440 reserves may be waived or reduced only upon the vote of a
441 majority of all nondeveloper voting interests voting in person
442 or by limited proxy at a duly called meeting of the association.

HB 391

2006
CS

If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves as included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

(c) Funding formulas for reserves required by this subsection shall be based on either a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

1. If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account shall be the sum of the following two calculations:

a. The total amount necessary, if any, to bring a negative component balance to zero.

b. The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period for which the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component.

The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may consider factors such as inflation and earnings on invested funds.

HB 391

2006
CS

470 2. If the association maintains a pooled account of two or
471 more of the required reserve assets, the amount of the
472 contribution to the pooled reserve account as disclosed in the
473 proposed budget shall be not less than that required to ensure
474 that the balance on hand at the beginning of the period for
475 which the budget will go into effect plus the projected annual
476 cash inflows over the remaining estimated useful lives of all of
477 the assets that make up the reserve pool are equal to or greater
478 than the projected annual cash outflows over the remaining
479 estimated useful lives of all of the assets that make up the
480 reserve pool, based on the current reserve analysis. The
481 projected annual cash inflows may include estimated earnings
482 from investment of principal. The reserve funding formula shall
483 not include any type of balloon payments.

484 (d) Reserve funds and any interest accruing thereon shall
485 remain in the reserve account or accounts and shall be used only
486 for authorized reserve expenditures unless their use for other
487 purposes is approved in advance by a majority vote at a duly
488 called meeting of the association. Prior to turnover of control
489 of an association by a developer to unit owners, the developer-
490 controlled association shall not vote to use reserves for
491 purposes other than that for which they were intended without
492 the approval of a majority of all nondeveloper voting interests
493 voting in person or by limited proxy at a duly called meeting of
494 the association.

495 (7) FINANCIAL REPORTING.--Within 90 days after the end of
496 the fiscal year, or annually on a date provided in the bylaws,
497 the association shall prepare and complete, or contract for the

HB 391

2006
CS

498 preparation and completion of, a financial report for the
499 preceding fiscal year. Within 21 days after the final financial
500 report is completed by the association or received from the
501 third party, but not later than 120 days after the end of the
502 fiscal year or other date as provided in the bylaws, the
503 ~~association shall prepare an annual financial report within 60~~
504 ~~days after the close of the fiscal year. The association shall,~~
505 within the time limits set forth in subsection (5), provide each
506 member with a copy of the annual financial report or a written
507 notice that a copy of the financial report is available upon
508 request at no charge to the member. Financial reports shall be
509 prepared as follows:

510 (a) An association that meets the criteria of this
511 paragraph shall prepare or cause to be prepared a complete set
512 of financial statements in accordance with generally accepted
513 accounting principles as adopted by the Florida Board of
514 Accountancy. The financial statements shall be based upon the
515 association's total annual revenues, as follows:

516 1. An association with total annual revenues of \$100,000
517 or more, but less than \$200,000, shall prepare compiled
518 financial statements.

519 2. An association with total annual revenues of at least
520 \$200,000, but less than \$400,000, shall prepare reviewed
521 financial statements.

522 3. An association with total annual revenues of \$400,000
523 or more shall prepare audited financial statements.

HB 391

2006
CS

(b)1. An association with total annual revenues of less than \$100,000 shall prepare a report of cash receipts and expenditures.

2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.

3. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall

HB 391

2006
CS

provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Section 6. Subsection (2) of section 720.303, Florida Statutes, as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida, is repealed.

Section 7. Subsection (1) of section 720.305, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

HB 391

2006
CS

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights; failure to fill sufficient number of vacancies on board of directors to constitute a quorum; appointment of receiver upon petition of any member; liens against real property.--

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not

HB 391

2006
CS

607 exclude other remedies provided by law. This section does not
608 deprive any person of any other available right or remedy.

609 (5) No association may sue to foreclose a lien against
610 real property during any period of time that the member of the
611 association who owes the money giving rise to the lien is also
612 entitled to the homestead protection described in s. 4(a)(1),
613 Art. X of the State Constitution as to that parcel of real
614 property. This subsection does not prevent the filing of a lien
615 against the real property, nor does this subsection bar the
616 filing of an action against a subsequent purchaser of the real
617 property regardless of whether the definition of homestead may
618 be applicable to such subsequent purchaser. Any applicable
619 statute of limitations, whether applicable to an in rem
620 foreclosure action or applicable to an in personam action
621 against the member, shall be tolled during any period of time
622 that the association is barred from filing or prosecuting a
623 foreclosure action by this subsection.

624 Section 8. Paragraph (c) of subsection (1) and subsection
625 (6) of section 720.306, Florida Statutes, are amended to read:

626 720.306 Meetings of members; voting and election
627 procedures; amendments.--

628 (1) QUORUM; AMENDMENTS.--

629 (c) Unless otherwise provided in the governing documents
630 as originally recorded or permitted by this chapter or chapter
631 617, an amendment may not materially and adversely alter the
632 proportionate voting interest appurtenant to a parcel or
633 increase the proportion or percentage by which a parcel shares
634 in the common expenses of the association unless the record

HB 391

2006
CS

635 parcel owner and all record owners of liens on the parcels join
636 in the execution of the amendment. For purposes of this section,
637 a change in quorum requirements is not an alteration of voting
638 interests. The merger or consolidation of one or more
639 associations under a plan of merger or consolidation under
640 chapter 607 or chapter 617 shall not be considered a material or
641 adverse alteration of the proportionate voting interest
642 appurtenant to a parcel.

643 (6) RIGHT TO SPEAK.--Members and parcel owners have the
644 right to attend all membership meetings and to speak at any
645 meeting with reference to all items ~~opened for discussion or~~
646 included on the agenda. Notwithstanding any provision to the
647 contrary in the governing documents or any rules adopted by the
648 board or by the membership, a member and a parcel owner have the
649 right to speak for at least 3 minutes on any agenda item,
650 provided that the member or parcel owner submits a written
651 request to speak prior to the meeting. The association may adopt
652 written reasonable rules governing the frequency, duration, and
653 other manner of member and parcel owner statements, which rules
654 must be consistent with this subsection.

655 Section 9. Paragraph (t) is added to subsection (3) of
656 section 720.307, Florida Statutes, to read:

657 720.307 Transition of association control in a
658 community.--With respect to homeowners' associations:

659 (3) At the time the members are entitled to elect at least
660 a majority of the board of directors of the homeowners'
661 association, the developer shall, at the developer's expense,

HB 391

2006
CS

662 within no more than 90 days deliver the following documents to
663 the board:

664 (t) The financial records, including financial statements
665 of the association, and source documents from the incorporation
666 of the association through the date of turnover. The records
667 shall be audited by an independent certified public accountant
668 for the period from the incorporation of the association or from
669 the period covered by the last audit, if an audit has been
670 performed for each fiscal year since incorporation. All
671 financial statements shall be prepared in accordance with
672 generally accepted accounting principles and shall be audited in
673 accordance with generally accepted auditing standards, as
674 prescribed by the Florida Board of Accountancy, pursuant to
675 chapter 473. The certified public accountant performing the
676 audit shall examine to the extent necessary supporting documents
677 and records, including the cash disbursements and related paid
678 invoices to determine if expenditures were for association
679 purposes and the billings, cash receipts, and related records to
680 determine that the developer was charged and paid the proper
681 amounts of assessments.

682 Section 10. Section 720.308, Florida Statutes, is amended
683 to read:

684 720.308 Assessments and charges.--

685 (1) ASSESSMENTS.--For any community created after October
686 1, 1995, the governing documents must describe the manner in
687 which expenses are shared and specify the member's proportional
688 share thereof. Assessments levied pursuant to the annual budget
689 or special assessment must be in the member's proportional share

HB 391

2006
CS

690 of expenses as described in the governing document, which share
691 may be different among classes of parcels based upon the state
692 of development thereof, levels of services received by the
693 applicable members, or other relevant factors. While the
694 developer is in control of the homeowners' association, it may
695 be excused from payment of its share of the operating expenses
696 and assessments related to its parcels for any period of time
697 for which the developer has, in the declaration, obligated
698 itself to pay any operating expenses incurred that exceed the
699 assessments receivable from other members and other income of
700 the association. This section does not apply to an association,
701 no matter when created, if the association is created in a
702 community that is included in an effective development-of-
703 regional-impact development order as of the effective date of
704 this act, together with any approved modifications thereto.

705 (2) GUARANTEES OF COMMON EXPENSES.--

706 (a) Establishment of guarantee.--If a guarantee is not
707 included in the purchase contracts, declaration, or prospectus,
708 any agreement establishing a guarantee shall only be effective
709 either upon the vote of a majority of all nondeveloper voting
710 interests voting in person or by limited proxy at a duly called
711 meeting of the association or by agreement in writing without a
712 meeting if provided in the bylaws. Such guarantee shall meet the
713 requirements of this section.

714 (b) Guarantee period.--The period of time for the
715 guarantee shall be indicated by a specific beginning and ending
716 date or event.

HB 391

2006
CS

1. The ending date or event shall be the same for all of the members of a homeowners' association, including members in different phases of homeowners' associations.

2. The guarantee may provide for different intervals of time during a guarantee period with different dollar amounts for each such interval.

(c) Guarantee extension.--The guarantee may provide that after the initial stated period, the developer has an option to extend the guarantee for one or more additional stated periods. The extension of a guarantee is limited to extending the ending date or event; therefore, the developer does not have the option of changing the level of assessments guaranteed.

(3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar amount of the guarantee shall be an exact dollar amount for each parcel identified in the declaration. Regardless of the stated dollar amount of the guarantee, assessments charged to a member shall not exceed the maximum obligation of the member based on the total amount of the adopted budget and the member's proportionate ownership share of the common elements.

(4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.--The cash payments required from the guarantor during the guarantee period shall be determined as follows:

(a) If at any time during the guarantee period the funds collected from member assessments at the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of all common expenses, including the full funding of the reserves unless properly

HB 391

2006
CS

waived, the guarantor shall advance sufficient cash to the association at the time such payments are due.

(b) Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the common expenses. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. For example, if the association operates a rental program in which rental expenses exceed rental revenues, the guarantor shall fund the rental expenses in excess of the rental revenues. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such nonassessment revenue-generating activity shall be considered separately. Capital contributions collected from members are not revenues and shall not be used to pay common expenses.

(5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The guarantor's total financial obligation to the association at the end of the guarantee period shall be determined on the accrual basis using the following formula:

(a) The guarantor shall fund the total common expenses incurred during the guarantee period, including the full funding of the reserves unless properly waived; less

(b) The total regular periodic assessments earned by the association from the members other than the guarantor during the

HB 391

2006
CS

guarantee period regardless of whether the actual level charged was less than the maximum guaranteed amount.

(6) EXPENSES.--Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the common expenses. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. For example, if the association operates a rental program in which rental expenses exceed rental revenues, the guarantor shall fund the rental expenses in excess of the rental revenues. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such nonassessment revenue-generating activity shall be considered separately. Capital contributions collected from members are not revenues and shall not be used to pay common expenses.

Section 11. Section 720.311, Florida Statutes, is amended to read:

720.311 Dispute resolution.--

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for ~~mediation or arbitration~~ or the serving of an offer for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department

HB 391

2006
CS

pursuant to s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(j) and 718.1255 and the rules adopted by the division. In addition, the department shall conduct mandatory binding arbitration of election disputes between a member and an association pursuant to s. 718.1255 and rules adopted by the division. Neither election disputes nor recall disputes are eligible for presuit mediation; these disputes shall be arbitrated by the department. At the conclusion of the proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least \$200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

(2)(a) Disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes, disputes regarding amendments to the association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association shall be the subject of an offer ~~filed with the department for presuit mandatory~~ mediation served by an aggrieved party before the dispute is

HB 391

2006
CS

827 filed in court. Presuit mediation proceedings must be conducted
828 in accordance with the applicable Florida Rules of Civil
829 Procedure, and these proceedings are privileged and confidential
830 to the same extent as court-ordered mediation. Disputes subject
831 to presuit mediation under this section shall not include the
832 collection of any assessment, fine, or other financial
833 obligation, including attorney's fees and costs, claimed to be
834 due or any action to enforce a prior mediation settlement
835 agreement between the parties. Also, in any dispute subject to
836 presuit mediation under this section where emergency relief is
837 required, a motion for temporary injunctive relief may be filed
838 with the court without first complying with the presuit
839 mediation requirements of this section. After any issues
840 regarding emergency or temporary relief are resolved, the court
841 may either refer the parties to a mediation program administered
842 by the courts or require mediation under this section. An
843 arbitrator or judge may not consider any information or evidence
844 arising from the presuit mediation proceeding except in a
845 proceeding to impose sanctions for failure to attend a presuit
846 mediation session or with the parties' agreement in a proceeding
847 seeking to enforce the agreement. Persons who are not parties to
848 the dispute may not attend the presuit mediation conference
849 without the consent of all parties, except for counsel for the
850 parties and a corporate representative designated by the
851 association. When mediation is attended by a quorum of the
852 board, such mediation is not a board meeting for purposes of
853 notice and participation set forth in s. 720.303. An aggrieved
854 party shall serve on the responding party a written offer to

HB 391

2006
CS

participate in presuit mediation in substantially the following
form:

STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

The alleged aggrieved party, _____, hereby
offers to _____, as the responding party,
to enter into presuit mediation in connection with the
following dispute, which by statute is of a type that
is subject to presuit mediation:

(List specific nature of the dispute or disputes to be
mediated and the authority supporting a finding of a
violation as to each dispute.)

Pursuant to section 720.311, Florida Statutes, this
offer to resolve the dispute through presuit mediation
is required before a lawsuit can be filed concerning
the dispute. Pursuant to the statute, the aggrieved
party is hereby offering to engage in presuit
mediation with a neutral third-party mediator in order
to attempt to resolve this dispute without court
action, and the aggrieved party demands that you
likewise agree to this process. If you fail to agree
to presuit mediation, or if you agree and later fail
to follow through with your agreement to mediate, suit
may be brought against you without further warning.

HB 391

2006
CS

The process of mediation involves a supervised negotiation process in which a trained, neutral third-party mediator meets with both parties and assists them in exploring possible opportunities for resolving part or all of the dispute. The mediation process is a voluntary one. By agreeing to participate in presuit mediation, you are not bound in any way to change your position or to enter into any type of agreement. Furthermore, the mediator has no authority to make any decisions in this matter or to determine who is right or wrong and merely acts as a facilitator to ensure that each party understands the position of the other party and that all reasonable settlement options are fully explored.

If an agreement is reached, it shall be reduced to writing and becomes a binding and enforceable commitment of the parties. A resolution of one or more disputes in this fashion avoids the need to litigate these issues in court. The failure to reach an agreement, or the failure of a party to participate in the process, results in the mediator's declaring an impasse in the mediation, after which the aggrieved party may proceed to court on all outstanding, unsettled disputes.

The aggrieved party has selected and hereby lists three certified mediators who we believe to be neutral

HB 391

2006
CS

and qualified to mediate the dispute. You have the
right to select any one of these mediators. The fact
that one party may be familiar with one or more of the
listed mediators does not mean that the mediator
cannot act as a neutral and impartial facilitator. Any
mediator who cannot act in this capacity ethically
must decline to accept engagement. The mediators that
we suggest, and their current hourly rates, are as
follows:

(List the names, addresses, telephone numbers, and
hourly rates of the mediators. Other pertinent
information about the background of the mediators may
be included as an attachment.)

You may contact the offices of these mediators to
confirm that the listed mediators will be neutral and
will not show any favoritism toward either party. The
names of certified mediators may be found through the
office of the clerk of the circuit court for this
circuit.

If you agree to participate in the presuit mediation
process, the statute requires that each party is to
pay one-half of the costs and fees involved in the
presuit mediation process unless otherwise agreed by
all parties. An average mediation may require 3 to 4
hours of the mediator's time, including some

HB 391

2006
CS

939 preparation time, and each party would need to pay
940 one-half of the mediator's fees as well as his or her
941 own attorney's fees if he or she chooses to employ an
942 attorney in connection with the mediation. However,
943 use of an attorney is not required and is at the
944 option of each party. The mediator may require the
945 advance payment of some or all of the anticipated
946 fees. The aggrieved party hereby agrees to pay or
947 prepay one-half of the mediator's estimated fees and
948 to forward this amount or such other reasonable
949 advance deposits as the mediator may require for this
950 purpose. Any funds deposited will be returned to you
951 if these are in excess of your share of the fees
952 incurred.

953
954 If you agree to participate in presuit mediation in
955 order to attempt to resolve the dispute and thereby
956 avoid further legal action, please sign below and
957 clearly indicate which mediator is acceptable to you.
958 We will then ask the mediator to schedule a mutually
959 convenient time and place for the mediation conference
960 to be held. The mediation conference must be held
961 within 90 days after the date of this letter unless
962 extended by mutual written agreement. In the event
963 that you fail to respond within 20 days after the date
964 of this letter, or if you fail to agree to at least
965 one of the mediators that we have suggested and to pay
966 or prepay to the mediator one-half of the costs

HB 391

2006
CS

involved, the aggrieved party will be authorized to
proceed with the filing of a lawsuit against you
without further notice and may seek an award of
attorney's fees or costs incurred in attempting to
obtain mediation.

Should you wish, you may also elect to waive presuit
mediation so that this matter may proceed directly to
court.

Therefore, please give this matter your immediate
attention. By law, your response must be mailed by
certified mail, return receipt requested, with an
additional copy being sent by regular first-class mail
to the address shown on this offer.

RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS
BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT
CHOICE.

AGREEMENT TO MEDIATE

The undersigned hereby agrees to participate in
presuit mediation and agrees to the following mediator
or mediators as acceptable to mediate this dispute:

HB 391

2006
CS

995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020

(List acceptable mediator or mediators.)

I/we further agree to pay or prepay one-half of the
mediator's fees and to forward such advance deposits
as the mediator may require for this purpose.

Signature of responding party #1

Signature of responding party #2 (if applicable) (if
property is owned by more than one person, all owners
must sign)

WAIVER OF MEDIATION

The undersigned hereby waives the right to participate
in presuit mediation of the dispute listed above and
agrees to allow the aggrieved party to proceed in
court on such matters.

Signature of responding party #1

HB 391

2006
CS

1021 Signature of responding party #2 (if applicable) (if
1022 property is owned by more than one person, all owners
1023 must sign)

1024

1025 (b) Service of the statutory offer to participate in
1026 presuit mediation shall be effected by sending a letter in
1027 substantial conformity with the above form by certified mail,
1028 return receipt requested, with an additional copy being sent by
1029 regular first-class mail, to the address of the responding party
1030 as it last appears on the books and records of the association.
1031 The responding party shall have 20 days from the date of the
1032 mailing of the statutory offer to serve a response to the
1033 aggrieved party in writing. The response shall be served by
1034 certified mail, return receipt requested, with an additional
1035 copy being sent by regular first-class mail, to the address
1036 shown on the statutory offer. In the alternative, the responding
1037 party may waive mediation in writing. Notwithstanding the
1038 foregoing, once the parties have agreed on a mediator, the
1039 mediator may reschedule the mediation for a date and time
1040 mutually convenient to the parties. The department shall conduct
1041 ~~the proceedings through the use of department mediators or refer~~
1042 ~~the disputes to private mediators who have been duly certified~~
1043 ~~by the department as provided in paragraph (c).~~ The parties
1044 shall share the costs of presuit mediation equally, including
1045 the fee charged by the mediator, if any, unless the parties
1046 agree otherwise, and the mediator may require advance payment of
1047 its reasonable fees and costs. The failure of any party to
1048 respond to a demand or response, to agree upon a mediator, to

HB 391

2006
CS

1049 make payment of fees and costs within the time established by
1050 the mediator, or to appear for a scheduled mediation session
1051 shall operate as an impasse in the presuit mediation by such
1052 party, entitling the other party to proceed in court and to seek
1053 an award of the costs and fees associated with the mediation.
1054 Additionally, if any presuit mediation session cannot be
1055 scheduled and conducted within 90 days after the offer to
1056 participate in mediation was filed, an impasse shall be deemed
1057 to have occurred unless both parties agree to extend this
1058 deadline. ~~If a department mediator is used, the department may~~
1059 ~~charge such fee as is necessary to pay expenses of the~~
1060 ~~mediation, including, but not limited to, the salary and~~
1061 ~~benefits of the mediator and any travel expenses incurred. The~~
1062 ~~petitioner shall initially file with the department upon filing~~
1063 ~~the disputes, a filing fee of \$200, which shall be used to~~
1064 ~~defray the costs of the mediation. At the conclusion of the~~
1065 ~~mediation, the department shall charge to the parties, to be~~
1066 ~~shared equally unless otherwise agreed by the parties, such~~
1067 ~~further fees as are necessary to fully reimburse the department~~
1068 ~~for all expenses incurred in the mediation.~~

1069 (c) ~~(b)~~ If presuit mediation as described in paragraph (a)
1070 is not successful in resolving all issues between the parties,
1071 the parties may file the unresolved dispute in a court of
1072 competent jurisdiction or elect to enter into binding or
1073 nonbinding arbitration pursuant to the procedures set forth in
1074 s. 718.1255 and rules adopted by the division, with the
1075 arbitration proceeding to be conducted by a department
1076 arbitrator or by a private arbitrator certified by the

HB 391

2006
CS

1077 department. If all parties do not agree to arbitration
1078 proceedings following an unsuccessful mediation, any party may
1079 file the dispute in court. A final order resulting from
1080 nonbinding arbitration is final and enforceable in the courts if
1081 a complaint for trial de novo is not filed in a court of
1082 competent jurisdiction within 30 days after entry of the order.
1083 As to any issue or dispute that is not resolved at presuit
1084 mediation, and as to any issue that is settled at presuit
1085 mediation but is thereafter subject to an action seeking
1086 enforcement of the mediation settlement, the prevailing party in
1087 any subsequent arbitration or litigation proceeding shall be
1088 entitled to seek recovery of all costs and attorney's fees
1089 incurred in the presuit mediation process.

1090 ~~(d) (e) The department shall develop a certification and~~
1091 ~~training program for private mediators and private arbitrators~~
1092 ~~which shall emphasize experience and expertise in the area of~~
1093 ~~the operation of community associations. A mediator or~~
1094 ~~arbitrator shall be certified to conduct mediation or~~
1095 ~~arbitration under this section by the department only if he or~~
1096 ~~she has been certified as a circuit court civil mediator or~~
1097 ~~arbitrator, respectively, pursuant to the requirements~~
1098 ~~established attended at least 20 hours of training in mediation~~
1099 ~~or arbitration, as appropriate, and only if the applicant has~~
1100 ~~mediated or arbitrated at least 10 disputes involving community~~
1101 ~~associations within 5 years prior to the date of the~~
1102 ~~application, or has mediated or arbitrated 10 disputes in any~~
1103 ~~area within 5 years prior to the date of application and has~~
1104 ~~completed 20 hours of training in community association~~

HB 391

2006
CS

1105 ~~disputes. In order to be certified by the department, any~~
1106 ~~mediator must also be certified by the Florida Supreme Court.~~
1107 ~~The department may conduct the training and certification~~
1108 ~~program within the department or may contract with an outside~~
1109 ~~vendor to perform the training or certification. The expenses of~~
1110 ~~operating the training and certification and training program~~
1111 ~~shall be paid by the moneys and filing fees generated by the~~
1112 ~~arbitration of recall and election disputes and by the mediation~~
1113 ~~of those disputes referred to in this subsection and by the~~
1114 ~~training fees.~~

1115 (e) ~~(d)~~ The presuit mediation procedures provided by this
1116 subsection may be used by a Florida corporation responsible for
1117 the operation of a community in which the voting members are
1118 parcel owners or their representatives, in which membership in
1119 the corporation is not a mandatory condition of parcel
1120 ownership, or which is not authorized to impose an assessment
1121 that may become a lien on the parcel.

1122 ~~(3) The department shall develop an education program to~~
1123 ~~assist homeowners, associations, board members, and managers in~~
1124 ~~understanding and increasing awareness of the operation of~~
1125 ~~homeowners' associations pursuant to this chapter and in~~
1126 ~~understanding the use of alternative dispute resolution~~
1127 ~~techniques in resolving disputes between parcel owners and~~
1128 ~~associations or between owners. Such education program may~~
1129 ~~include the development of pamphlets and other written~~
1130 ~~instructional guides, the holding of classes and meetings by~~
1131 ~~department employees or outside vendors, as the department~~
1132 ~~determines, and the creation and maintenance of a website~~

HB 391

2006
CS

1133 ~~containing instructional materials. The expenses of operating~~
1134 ~~the education program shall be initially paid by the moneys and~~
1135 ~~filing fees generated by the arbitration of recall and election~~
1136 ~~disputes and by the mediation of those disputes referred to in~~
1137 ~~this subsection.~~

1138 Section 12. Except as otherwise expressly provided in this
1139 act, this act shall take effect July 1, 2006.

HB 543 - Relating to Condominiums - 2006**Sponsor(s)**

by Goodlette CS Sponsors: Civil Justice

Summary

General Condominiums; substantially revises provisions re termination of condominium form of ownership of property; waives certain notice requirements following natural disasters; provides requirements for plan of termination; provides powers & duties of termination trustee; provides procedure for contesting plan of termination; provides rules for distribution of property & sale proceeds; allows creation of another condominium by trustee, etc. Amends 718.117. EFFECTIVE DATE: 07/01/2006.



Actions

Date	Chamber	Action
12/19/05	HOUSE	Filed
01/10/06	HOUSE	Referred to Civil Justice; Business Regulation; Justice Council
01/13/06	HOUSE	On Committee agenda - Civil Justice, 01/25/06, 9:30 am, 24-H
01/25/06	HOUSE	Favorable with CS by Civil Justice; 6 Yeas, 0 Nays
02/01/06	HOUSE	Now in Business Regulation

Similar Bills

SB 1556 - Relating to Condominiums by Geller

Bill Text and Filed Amendments

 H 0543	12/19/05	
└ Amendment 1	01/25/06	Adopted
└ Amendment 2	01/25/06	Adopted
 H 0543C1	01/27/06	

No amendments to this bill text.

Staff Analysis

H 0543	Civil Justice
H 0543A	Civil Justice

Vote History

No vote history for this bill.

Related Documents


No related documents.

Statute Citations

718.117

Codes and Comments**Condominiums** **Priority/Importance/Position**

Not top priority / Importance not specified / Position not specified

 [Edit Comments](#)**Analyst Comments**

You have no analyst comments to this bill.

Generated on 02/08/06

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 543 CS Condominiums
SPONSOR(S): Goodlette
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1556

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	6 Y, 0 N, w/CS	Shaddock	Bond
2) Business Regulation Committee			
3) Justice Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

Ownership of a condominium unit is a unique form of real estate ownership. A condominium owner is entitled to both the exclusive ownership and possession of a unit and an undivided interest as a tenant in common with the other unit owners in the common areas. In other words, a condominium is a single real-estate unit contained within a multi-unit condominium in which a person has both separate ownership of a unit and a common interest, along with the condominium's other owners, in the common areas.

Currently, in order to terminate a condominium, even after a catastrophic event, the consent of all the unit owners and all the holders of the recorded liens affecting any of the condo parcels is required. This bill amends the law regarding condominium termination to:

- Authorize the termination a condominium for economic waste or impossibility;
- Provide alternative methods for the allocation of proceeds from the sale of condominium property;
- Lower the total vote requirement for termination of a condominium depending on the circumstances; and
- Provide a method by which a court may entertain a petition to approve a plan of termination of a condominium.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill increases the probability that condominium unit owners will have increased flexibility in terminating the condominium for economic waste or impossibility.

B. EFFECT OF PROPOSED CHANGES:

Condominiums are creatures of statute, and are thereby subject to the control and regulation of the legislature, which has broad discretion in its regulatory efforts, especially in fashioning remedies necessary to protect the interests of those persons involved. "The condominium concept must operate within the applicable statutory and constitutional provisions."¹

Basically, a condominium is a parcel of real estate that has been subdivided into contiguous lots. The area above the land can be "subdivided into a number of three-dimensional air spaces, each susceptible of being separately conveyed and incumbered."²

Condominium unit owners operate as a democracy, of necessity more restrictive in the use of condominium property than might be acceptable given traditional forms of property ownership. Thus, a condominium owner "relinquishes some degree of freedom of choice and agrees to subordinate some of his traditional ownership rights when he elects condominium ownership. While a titleholder of a condominium unit has fundamental property rights, he enjoys them coextensively with other members of the condominium project, and thus does not have an exclusive interest in the condominium property."³

A "declarant" is a grantor that establishes or joins in the creation of a declaration of condominium. A "unit" refers to the physical portion of a condominium designated for separate ownership or occupancy. An individual who purchases or owns an apartment in a condominium is generally referred to as a "unit owner."⁴

Current Law Regarding Termination

Chapter 718, F.S., the "Condominium Act," governs condominium associations. Section 718.117, F.S. provides the general rules and procedures relating to the termination of a condominium, and those provisions are set forth below.

Termination

In order to terminate a condominium, the consent of all the unit owners and all the holders of the recorded liens affecting any of the condo parcels is required.⁵

Vacancy on the Board

Unless provided otherwise, a vacancy in the board during a winding up proceeding, resulting from the resignation or expiration of term of any director, can be filled by a majority vote of the unit owners.⁶

¹ 31 CJS § 193, Estates.

² *Id.*

³ *Id.*

⁴ 15a Am. Jur. 2d s. 1, Condo.

⁵ See s. 718.117(1), F.S., unless the declaration provides otherwise.

⁶ Section 718.117(3), F.S.

Natural Disaster

If, after a natural disaster, the identity of the directors or their right to hold office is in doubt, or if they are deceased or unable to act, or if they fail or refuse to act, or their whereabouts cannot be ascertained, any interested person may petition the circuit court to determine the identity of the directors, or, if determined to be in the best interest of the unit owners, to appoint a receiver to wind up the affairs of the association after hearing upon such notice to such persons as the court may direct.

The receiver will be vested with the powers of the board of directors, as provided in the declaration and bylaws and statute and such other powers that are necessary to wind up the affairs of the association. The order appointing the receiver will provide for the payment of a reasonable fee for the services of the receiver from the sources identified in the order, which may include rents, profits, incomes, maintenance fees, or special assessments collected from the condominium property.⁷

Terminated Association

An association that has been terminated continues to exist, however, for the limited purpose of winding up its affairs, prosecuting and defending actions by or against it, and enabling it to collect and discharge obligations, to dispose of and convey its property, and to collect and divide its assets"⁸

Distribution of Assets

After determining that all known debts and liabilities of an association in the process of winding up have been paid or provided for, all remaining assets must be distributed.⁹ If the winding up is pursuant to a court proceeding, the distribution may not be made until after any prescribed period ordered by the court for the presentation of claims.¹⁰

Assets held by an association upon a valid condition requiring return which condition has occurred or will occur, need to be returned in accordance with the condition.¹¹ The remaining assets are to be distributed in the following manner: (1) if the declaration or bylaws provides the manner of disposition, the assets are to be disposed of in that manner; and (2) if the declaration or bylaws do not provide the manner of disposition, the assets are to be distributed among the unit in the same shares as each owner previously owned in the common elements.¹² All liens must be transferred to the share in the condominium property attributable to the unit originally encumbered by the lien in its same priority

The distribution of the assets can be made by money, property, or securities, and the distribution can be in installments or as a whole. But distribution must be made as soon as reasonably consistent with the beneficial liquidation of the assets.¹³

Effect of the Bill

The bill amends s. 718.117, F.S. regarding the method and process for termination of a condominium. Initially it should be noted, that s. 718.117(1), F.S. provides legislative findings that "it is contrary to the public policy of this state to require the continued operation of a condominium when to do so would constitute economic waste or when the ability to do so is made impossible by law or regulation." This

⁷ Section 718.117(4), F.S.

⁸ Section 718.117(9), F.S.

⁹ 10 Fla. Jur. 2d s. 43, Condominiums, Etc., (referencing s. 718.117(5), F.S.).

¹⁰ Section 718.117(5), F.S.

¹¹ Section 718.117(6), F.S.

¹² Section 718.117(6)(a), (b), (7), F.S.

¹³ 10 Fla. Jur. 2d s. 43, Condominiums, Etc. (citing s. 718.117(8), F.S.).

section, further, provides that it will apply to all condominiums in Florida in existence or after the effective date of this act.¹⁴

Termination Condominium

This bill provides, notwithstanding any contrary provision in the declaration, a condominium may be terminated by a plan of termination (hereinafter "plan of termination" or "plan") approved by either the lesser of a majority of the total voting interests or as otherwise provided in the declaration, in the following circumstances: (1) when the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the condominium after completion of the repairs; or (2) when it becomes impossible to operate or reconstruct a condominium in its prior physical configuration because of land-use laws or regulations.¹⁵

Condominiums that are Timeshares

Notwithstanding the provisions above, a condominium in which 75% or more of the units are timeshare units may only be terminated by a plan of termination that is approved by 80% of the total voting interests of the association and the holders of 80% of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium (unless the declaration provides for a lower voting percentage).¹⁶

Optional Termination

Except as provided elsewhere in this bill¹⁷ or unless the declaration provides for a lower percentage, a condominium may be terminated by a plan of termination approved by at least 80% of the total voting interests of the condominium.¹⁸

Jurisdiction of Court

If 80% of the total voting interests fail to approve a plan of termination but fewer than 20% of the total voting interests vote to disapprove a plan, the circuit court will have jurisdiction to entertain a petition by the association or by one or more unit owners and approve the plan of termination.¹⁹ This action may be a class action.²⁰

All unit owners and the association must be parties to the action, and the action may be brought against the nonconsenting unit owners. Service of process on unit owners may be by publication, but the plaintiff must furnish each unit owner not personally served with process a copy of the petition and plan of termination, and after entry of judgment, a copy of the final decree of the court, by mail at the owner's last known address.²¹

¹⁴ Section 718.117(1), F.S.

¹⁵ Section 718.117(2)(a), F.S.

¹⁶ Section 718.117(2)(b), F.S.

¹⁷ See ss. 718.117(2) and (4), F.S.

¹⁸ Section 718.117(3), F.S. This portion does not apply to condominiums in which 75% or more of the units are timeshare units.

¹⁹ Section 718.117(4)(a), F.S.

²⁰ *Id.*

²¹ Section 718.117(4)(b), F.S.

Mortgage Leinholders

After the consideration of whether the rights and interests of unit owners are equitably addressed in the plan, the plan of termination may be approved or rejected by the court. The court may modify the plan to provide for an equitable distribution of the interests of unit owners prior to approving the plan.^{22 23}

Associations Powers of Termination

Approval of a plan by the holder of a recorded mortgage lien affecting a condominium parcel in which fewer than 75% of the units are timeshare units is not required unless the plan of termination will result in less than the full satisfaction of the mortgage lien; notwithstanding any contrary provision in the declaration or ch. 718, F.S.²⁴

The condominium association will continue in existence following approval of the plan, with all powers it had before. Notwithstanding any contrary provision, after approval of the plan, the board has essentially the same powers and duties currently provided for in s. 718.117(2).²⁵

Natural Disaster

The bill provides a contingency framework, s. 718.117(8), F.S., for the directors of the association in the event of a natural disaster. That framework is essentially identical to the existing one contained in s. 718.117(4), F.S.

Plan of Termination

The plan must be a written document executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee.²⁶ A copy of the proposed plan must be given to all unit owners in the same manner as for notice of an annual meeting. That notice must be provided at least 14 days prior to the meeting during which the plan is to be voted upon. Or notice must be provided prior to or simultaneously with the distribution of the solicitation seeking execution of the plan or written consent to or joinder in the plan.²⁷ A unit owner may agree to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners and, if required, consents or joinders of mortgagees must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan.²⁸

²² Section 718.117(4)(c), F.S.

²³ Nevertheless, this subsection does not apply to condominiums in which 75% or more of the units are timeshare units, s. 718.117(4)(d), F.S.

²⁴ Section 718.117(6), F.S.

²⁵ Section 718.117(7), F.S. Those powers and duties include the ability to: employ directors, agents, attorneys, and other professionals to liquidate or conclude its affairs; conduct the affairs of the association as necessary for the liquidation or termination; carry out contracts and collect, pay, and settle debts and claims for and against the association; defend suits brought against the association; sue in the name of the association for all sums due or owed to the association or to recover any of its property; perform any act necessary to maintain, repair, or demolish unsafe or uninhabitable improvements or other condominium property in compliance with applicable codes; sell at public or private sale or to exchange, convey, or otherwise dispose of assets of the association for an amount deemed to be in the best interests of the association, and to execute bills of sale and deeds of conveyance in the name of the association; collect and receive rents, profits, accounts receivable, income, maintenance fees, special assessments, or insurance proceeds for the association; and contract and do anything in the name of the association which is proper or convenient to terminate the affairs of the association.

²⁶ Section 718.117(9), F.S.

²⁷ *Id.*

²⁸ *Id.*

A plan must specify:²⁹

- The name, address, and powers of the termination trustee;
- A date after which the plan of termination is void if it has not been recorded;
- The interests of the respective unit owners in the association property, common surplus, and other assets of the association, which will be the same as the respective interests of the unit owners in the common elements immediately before the termination, unless otherwise provided;
- The interests of the respective unit owners in any proceeds from any sale of the condominium property. The plan of termination may apportion those proceeds pursuant to any of the methods prescribed in s. 718.117(12) (see the discussion below regarding the allocation of property). If, condominium property or real property owned by the association is to be sold following termination, the plan must provide for the sale and may establish any minimum sale terms; and
- Any interests of the respective unit owners in any insurance proceeds or condemnation proceeds that are not used for repair or reconstruction. Unless the declaration expressly addresses the distribution of insurance proceeds or condemnation proceeds, the plan of termination may apportion those proceeds pursuant to any of the methods prescribed in s. 718.117(12) (see the discussion below regarding the allocation of property).³⁰

The plan may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, in which case the plan must specify the conditions of possession.³¹

In the case of a conditional termination, the plan must specify the conditions for termination. A conditional plan will not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed, confirming that the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests, have been recorded.³²

Allocation of Proceeds of Sale of Condominium Property

Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair-market values immediately before the termination.³³ The market values are to be determined by one or more independent appraisers selected by the association or termination trustee.³⁴

The portion of proceeds allocated to the units will be further apportioned among the individual units. The apportionment is deemed fair and reasonable if it is determined by any of the following methods: 1) the respective values of the units based on the fair-market values of the units immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee; 2) the respective values of the units based on the most recent market value of the units before the termination, as provided in the county property appraiser's records; or 3) the respective interests of the units in the common elements specified in the declaration immediately before the termination.³⁵

²⁹ Section 718.117(10), F.S.

³⁰ *Id.*

³¹ Section 718.117(11)(a), F.S.

³² Section 718.117(11)(b), F.S.

³³ Section 718.117(12)(a), F.S.

³⁴ *Id.*

³⁵ Section 718.117(12)(b), F.S.

The three methods of apportionment listed above do not prohibit any other method of apportioning the proceeds of sale allocated to the units agreed upon in the plan of termination. However, the portion of the proceeds from the common elements will be divided among the units based upon their respective interests in the common elements as provided in the declaration.³⁶

Liens that encumber a unit are transferred to the proceeds of the sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority. The proceeds of any sale of condominium property pursuant to a plan of termination may not be deemed to be common surplus or association property.³⁷

Termination Trustee

The association will serve as termination trustee unless another person is appointed in the plan of termination. If the association is unable, unwilling, or fails to act as trustee, any unit owner may petition the court to appoint a trustee. Upon recording or at a later date specified in the plan, title to the condominium property vests in the trustee. Unless prohibited by the plan, the termination trustee will be vested with the powers given to the board.³⁸

If the association does not serve as the termination trustee, the trustee's powers are coextensive with those of the association to the extent not prohibited in the plan or the order of appointment. If the association is not the termination trustee, the association will transfer any association property to the trustee. If the association is dissolved, the trustee will also have the powers necessary to conclude the affairs of the association.³⁹

Title Vested in Termination Trustee

If termination is pursuant to a plan, the unit owners' rights and title as tenants in common in undivided interests in the condominium property vest in the termination trustee when the plan is recorded or at a later date specified in the plan. The unit owners thereafter become the beneficiaries of the proceeds realized from the plan of termination. The termination trustee may deal with the condominium property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee, on behalf of the unit owners, may contract for the sale of real property, but the contract is not binding on the unit owners until the plan is approved.⁴⁰

Notice

Within 30 days after a plan has been recorded, the termination trustee must deliver by certified mail, return receipt requested, notice to all unit owners, lienors of the condominium property, and lienors of all units at their last known addresses that a plan has been recorded. The notice must include the book and page number of the public records in which the plan was recorded, notice that a copy of the plan must be furnished upon written request, and notice that the unit owner or lienor has the right to contest the fairness of the plan.⁴¹

Within 90 days after the effective date of the plan, the trustee must provide to the division⁴² a certified copy of the recorded plan, the date the plan was recorded, and the county, book, and page number of the public records in which the plan was recorded.⁴³

³⁶ Section 718.117(12)(c), F.S.

³⁷ Section 718.117(12)(d), F.S.

³⁸ Section 718.117(13), F.S.

³⁹ *Id.*

⁴⁰ Section 718.117(14), F.S.

⁴¹ Section 718.117(15)(a), F.S.

⁴² Division refers to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation. Section 718.103(17), F.S.

Right to Contest

A unit owner or lienor may contest a plan by initiating a summary procedure, pursuant to s. 51.011, F.S., within 90 days after the date the plan is recorded. A unit owner or lienor who fails to contest the plan within that period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property.⁴⁴

In an action contesting a plan, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable. However, the apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in s. 718.117(12) (see the discussion above regarding the allocation of property).⁴⁵

The court must adjudge the rights and interests of the parties and order the plan to be implemented if it is fair and reasonable, but the court must void a plan that is determined not to be fair and reasonable. In such an action, the prevailing party may recover reasonable attorney's fees and costs.⁴⁶

Distribution

Following termination, the condominium property, association property, common surplus, and other assets of the association are held by the termination trustee, as trustee for unit owners and holders of liens on the units, in their order of priority.⁴⁷

Not less than 30 days prior to the first distribution, the termination trustee must deliver by certified mail, return receipt requested, a notice of the estimated distribution to all unit owners, lienors of the condominium property, and lienors of each unit at their last known addresses stating a good-faith estimate of the amount of the distributions to each class and the procedures and deadline for notifying the termination trustee of any objections to the amount.⁴⁸ The deadline must be at least 15 days after the date the notice was mailed.⁴⁹

If a unit owner or lienor files a timely objection with the termination trustee, the trustee does not have to distribute the funds and property allocated to the respective unit owner or lienor until the trustee has had a reasonable time to determine the validity of the adverse claim.⁵⁰ In the alternative, the trustee may interplead the unit owner, lienor, and any other person claiming an interest in the unit and deposit the funds allocated to the unit in the court registry, at which time the condominium property, association property, common surplus, and other assets of the association are free of all claims and liens of the parties to the suit. In an interpleader action, the trustee and prevailing party may recover reasonable attorney's fees and costs and court costs.⁵¹

The proceeds of any sale of condominium property or association property and any remaining condominium property or association property, common surplus, and other assets must be distributed in the following priority:⁵²

1. To pay the costs of implementing the plan, including demolition, removal, and disposal fees, termination trustee's fees and costs, accounting fees and costs, and attorney's fees and costs;

⁴³ Section 718.117(15)(b), F.S.

⁴⁴ Section 718.117(16), F.S.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Section 718.117(17)(a), F.S.

⁴⁸ Section 718.117(17)(b), F.S.

⁴⁹ Section 718.117(17)(b), F.S.; the notice may be sent with or after the notice required by s. 718.117(15).

⁵⁰ Section 718.117(17)(b), F.S.

⁵¹ *Id.*

⁵² Section 718.117(17)(c), F.S.

2. To lienholders of liens recorded prior to the recording of the declaration;
3. To lienholders of liens of the association which have been consented to;⁵³
4. To creditors of the association, as their interests appear;
5. To unit owners, the proceeds of any sale of condominium property subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or lienor;
6. To unit owners, the remaining condominium property, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor;
7. To unit owners, the proceeds of any sale of association property, the remaining association property, common surplus, and other assets of the association, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor.

After determining that all known debts and liabilities of an association in the process of termination have been paid or adequately provided for, the termination trustee will distribute the remaining assets pursuant to the plan.⁵⁴ If the termination is by court proceeding, the distribution may not be made until any period for the presentation of claims ordered by the court has elapsed.⁵⁵

Assets held by an association upon a valid condition requiring return, transfer, or conveyance, which condition has occurred or will occur, will be returned, transferred, or conveyed in accordance with the condition. The remaining association assets shall be distributed pursuant to the priority order above.⁵⁶

Distribution may be made in money, property, or securities and in installments or as a lump sum, if it can be done fairly and ratably and in conformity with the plan of termination. Distribution shall be made as soon as is reasonably consistent with the beneficial liquidation of the assets.⁵⁷

Association Status

The termination of a condominium does not change the corporate status of the association that operated the condominium property. The association continues to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not to act except as necessary to conclude its affairs.⁵⁸

Creation of Another Condominium

The termination of a condominium does not bar the creation, by the termination trustee, of another condominium affecting any portion of the same property.⁵⁹

⁵³ Section 718.121(1), F.S., requires the unanimous consent of the unit owners before a lien is valid against the condominium as a whole.

⁵⁴ Section 718.117(17)(d), F.S.

⁵⁵ *Id.*

⁵⁶ Section 718.117(17)(e), F.S.

⁵⁷ Section 718.117(17)(f), F.S.

⁵⁸ Section 718.117(18), F.S., this section is essentially s. 718.117(9), F.S.

⁵⁹ Section 718.117(19), F.S., is essentially s. 718.117(10), F.S.

Exclusion

This section does not apply to the termination of a condominium incident to a merger of that condominium with one or more other condominiums under s. 718.110(7), F.S.⁶⁰

C. SECTION DIRECTORY:

Section 1: Amends s. 718.117, F.S., to provide for termination of a condominium.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill provides increased opportunity for condominium owners who are a part of an uneconomic condominium to terminate that condominium; thereby allowing for greater flexibility in the investment or reinvestment of capital.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

⁶⁰ Section 718.117(20), F.S., is essentially s. 718.117(11), F.S.
STORAGE NAME: h0543a.CJ.doc
DATE: 1/27/2006

2. Other:

Article I, Section 10 of the Florida Constitution provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."⁶¹ "A statute contravenes the constitutional prohibition against impairment of contracts when it has the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts."^{62 63} While the right to contract and use one's property as an individual sees fit is a "fundamental right" guaranteed by both the United States and Florida constitutions, the "degree of such guarantees must be determined in the light of social and economic conditions which prevail at a given time."⁶⁴

The Supreme Court of Florida in *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979) held that laws impairing contracts can be unconstitutional if they unreasonably and unnecessarily impair the contractual rights of citizens.⁶⁵ The *Pomponio* Court indicated that the "well-accepted" principle in this state is that virtually no degree of contract impairment is tolerable in this state." *Pomponio*, 378 So. 2d at 780. When seeking to determine what level of impairment is constitutionally permissible, a court "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy." *Id.*

In other words, "[t]his method requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power." *U.S. Fidelity and Guar. Co. v. Department of Ins.*, 453 So. 2d 1355, 1360-61 (1984). What should be reviewed when considering this balancing test?

[T]he United States Supreme Court recently outlined the main factors to be considered in applying this balancing test. The threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. Total destruction of contractual expectations is not necessary for a finding of substantial impairment. On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. The Court long ago observed: One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation such as the remedying of a broad and general social or economic problem. Furthermore, since *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. One legitimate state interest is the elimination of unforeseen windfall profits. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests. Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public

⁶¹ Article 1, Section 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts"

⁶² 10a Fla. Jur. s. 414, Constitutional Law.

⁶³ The term impair is defined as "to make worse; to diminish in quantity, value, excellence, or strength; or to lessen in power or weaken." 10a Fla. Jur. s. 414, Constitutional Law.

⁶⁴ *Palm Beach Mobile Homes, Inc. v. Strong*, 300 So. 2d 881, 884 (Fla. 1974).

⁶⁵ The Florida Supreme Court has adopted the method of analysis from the United States Supreme Court in cases involving the contract clause. *Pomponio*, 378 So. 2d at 780.

purpose justifying [the legislation's] adoption. Unless the State itself is a contracting party, as is customary in reviewing economic and social regulation, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

U.S. Fidelity and Guar. Co., 453 So.2d at 1360-61 (Fla. 1984) (internal citations and quotations omitted).

The language of the proposed s. 718.117, F.S., specifically the requirement that "this section shall apply to all condominiums in this state in existence on or after the effective date of this act,"⁶⁶ would seem to qualify under the Florida Supreme Court's definition of impairment of contract.⁶⁷ Therefore, the critical inquiry would seem to be the balancing test performed by the courts to determine the permissibility of the impairment. While not an exhaustive list, this bill would seem to have at least two significant factors which would mitigate in its favor. First, all condominiums are created by statute and subject to the control of the legislature.⁶⁸ Second, the bill makes a legislative finding that the public policy of this state is driving the changes in this bill.⁶⁹

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 25, 2005, the Civil Justice Committee adopted two amendments which modified the bill in the following manner:

- To require that the plan of termination specify any interest of the respective unit owners in any insurance proceeds or condemnation proceeds that are not used for repair or reconstruction at the time of termination.
- To provide that when the portion of proceeds allocated to the units will be further apportioned among the individual units, that apportionment is deemed to be fair and reasonable if it is determined by the unit owners who are approving the plan of termination provided that is by one of three delineated methods.

The bill was then reported favorably with a committee substitute.

⁶⁶ Section 718.117(1), F.S.

⁶⁷ As the Fourth District Court of Appeal noted it is only the retroactive application of a statute "which gives rise to questions of unreasonable impairment of contract obligations and remedies." *Cenville Investors, Inc. v. Condominium Owners Org. of Century Village East, Inc.*, 556 So. 2d 1197, 1200 (Fla. 4th DCA 1990).

⁶⁸ Section 718.104, F.S. provides "[e]very condominium created in this state shall be created pursuant to this chapter." See *Winkelman v. Toll*, 661 So. 2d 102, 105 (Fla. 4th DCA 1995) (stating "[a] condominium is strictly a create of statute.").

⁶⁹ The Supreme Court of Florida referenced *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977) which cited to *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934) for the proposition that "laws intended to regulate existing contractual relationships must serve a legitimate public purpose . . . Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption." *Pomponio*, 378 So. 2d at 778.

HB 543

2006
CS

CHAMBER ACTION

The Civil Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to condominiums; amending s. 718.117, F.S.; substantially revising provisions relating to the termination of the condominium form of ownership of a property; providing legislative findings; providing grounds; providing powers and duties of the board of administration of the association; waiving certain notice requirements following natural disasters; providing requirements for a plan of termination; providing for the allocation of proceeds from the sale of condominium property; providing powers and duties of a termination trustee; providing notice requirements; providing a procedure for contesting a plan of termination; providing rules for the distribution of property and sale proceeds; providing for the association's status following termination; allowing the creation of another condominium by the trustee; specifying an exclusion; providing an effective date.

HB 543

2006
CS

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 718.117, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 718.117, F.S., for present text.)

718.117 Termination of condominium.--

(1) LEGISLATIVE FINDINGS.--The Legislature finds that it is contrary to the public policy of this state to require the continued operation of a condominium when to do so would constitute economic waste or when the ability to do so is made impossible by law or regulation. The provisions of this section shall apply to all condominiums in this state in existence on or after the effective date of this act.

(2) TERMINATION BECAUSE OF ECONOMIC WASTE OR IMPOSSIBILITY.--

(a) Notwithstanding any provision to the contrary in the declaration, the condominium form of ownership of a property may be terminated by a plan of termination approved by the lesser of a majority of the total voting interests or as otherwise provided in the declaration for approval of termination, in the following circumstances:

1. When the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the condominium after completion of the repairs; or

HB 543

2006
CS

51 2. When it becomes impossible to operate or reconstruct a
52 condominium in its prior physical configuration because of land-
53 use laws or regulations.

54 (b) Notwithstanding paragraph (a), a condominium in which
55 75 percent or more of the units are timeshare units may only be
56 terminated pursuant to a plan of termination approved by 80
57 percent of the total voting interests of the association and the
58 holders of 80 percent of the original principal amount of
59 outstanding recorded mortgage liens of timeshare estates in the
60 condominium, unless the declaration provides for a lower voting
61 percentage.

62 (3) OPTIONAL TERMINATION.--Except as provided in
63 subsections (2) and (4) or unless the declaration provides for a
64 lower percentage, the condominium form of ownership of the
65 property may be terminated pursuant to a plan of termination
66 approved by at least 80 percent of the total voting interests of
67 the condominium. This subsection does not apply to condominiums
68 in which 75 percent or more of the units are timeshare units.

69 (4) JURISDICTION.--

70 (a) If 80 percent of the total voting interests fail to
71 approve the plan of termination but fewer than 20 percent of the
72 total voting interests vote to disapprove of the plan, the
73 circuit court shall have jurisdiction to entertain a petition by
74 the association or by one or more unit owners and approve the
75 plan of termination, and the action may be a class action.

76 (b) All unit owners and the association must be parties to
77 the action. The action may be brought against the nonconsenting
78 unit owners as a class action. Service of process on unit owners

HB 543

2006

CS

79 may be by publication, but the plaintiff must furnish each unit
80 owner not personally served with process a copy of the petition
81 and plan of termination, and after entry of judgment, a copy of
82 the final decree of the court, by mail at the owner's last known
83 address.

84 (c) After the consideration of whether the rights and
85 interests of unit owners are equitably set forth in the plan of
86 termination as required by this section, the plan of termination
87 may be approved or rejected by the court. Consistent with the
88 provisions of this section, the court may also modify the plan
89 of termination to provide for an equitable distribution of the
90 interests of unit owners prior to approving the plan of
91 termination.

92 (d) This subsection does not apply to condominiums in
93 which 75 percent or more of the units are timeshare units.

94 (5) EXEMPTION.--A plan of termination is not an amendment
95 subject to s. 718.110(4).

96 (6) MORTGAGE LIENHOLDERS.--Notwithstanding any provision
97 to the contrary in the declaration or this chapter, approval of
98 a plan of termination by the holder of a recorded mortgage lien
99 affecting a condominium parcel in which fewer than 75 percent of
100 the units are timeshare units is not required unless the plan of
101 termination will result in less than the full satisfaction of
102 the mortgage lien affecting the parcel.

103 (7) POWERS IN CONNECTION WITH TERMINATION.--The
104 association shall continue in existence following approval of
105 the plan of termination, with all powers it had before approval
106 of the plan. Notwithstanding any contrary provision in the

HB 543

2006
CS

107 declaration or bylaws, after approval of the plan, the board has
108 the power and duty:

109 (a) To employ directors, agents, attorneys, and other
110 professionals to liquidate or conclude its affairs.

111 (b) To conduct the affairs of the association as necessary
112 for the liquidation or termination.

113 (c) To carry out contracts and collect, pay, and settle
114 debts and claims for and against the association.

115 (d) To defend suits brought against the association.

116 (e) To sue in the name of the association for all sums due
117 or owed to the association or to recover any of its property.

118 (f) To perform any act necessary to maintain, repair, or
119 demolish unsafe or uninhabitable improvements or other
120 condominium property in compliance with applicable codes.

121 (g) To sell at public or private sale or to exchange,
122 convey, or otherwise dispose of assets of the association for an
123 amount deemed to be in the best interests of the association,
124 and to execute bills of sale and deeds of conveyance in the name
125 of the association.

126 (h) To collect and receive rents, profits, accounts
127 receivable, income, maintenance fees, special assessments, or
128 insurance proceeds for the association.

129 (i) To contract and do anything in the name of the
130 association which is proper or convenient to terminate the
131 affairs of the association.

132 (8) NATURAL DISASTERS.--

133 (a) If, after a natural disaster, the identity of the
134 directors or their right to hold office is in doubt, if they are

HB 543

2006
CS

135 deceased or unable to act, if they fail or refuse to act, or if
136 they cannot be located, any interested person may petition the
137 circuit court to determine the identity of the directors or, if
138 found to be in the best interests of the unit owners, to appoint
139 a receiver to conclude the affairs of the association after a
140 hearing following notice to such persons as the court directs.

141 (b) The receiver shall have all powers given to the board
142 pursuant to the declaration, bylaws, and subsection (7), and any
143 other powers that are necessary to conclude the affairs of the
144 association and are set forth in the order of appointment. The
145 appointment of the receiver is subject to the bonding
146 requirements of such order. The order shall also provide for the
147 payment of a reasonable fee to the receiver from the sources
148 identified in the order, which may include rents, profits,
149 incomes, maintenance fees, or special assessments collected from
150 the condominium property.

151 (9) PLAN OF TERMINATION.--The plan of termination must be
152 a written document executed in the same manner as a deed by unit
153 owners having the requisite percentage of voting interests to
154 approve the plan and by the termination trustee. A copy of the
155 proposed plan of termination shall be given to all unit owners,
156 in the same manner as for notice of an annual meeting, at least
157 14 days prior to the meeting at which the plan of termination is
158 to be voted upon or prior to or simultaneously with the
159 distribution of the solicitation seeking execution of the plan
160 of termination or written consent to or joinder in the plan. A
161 unit owner may document assent to the plan of termination by
162 executing the plan or by consent to or joinder in the plan in

HB 543

2006
CS

163 the manner of a deed. A plan of termination and the consents or
164 joinders of unit owners and, if required, consents or joinders
165 of mortgagees must be recorded in the public records of each
166 county in which any portion of the condominium is located. The
167 plan of termination is effective only upon recordation or at a
168 later date specified in the plan.

169 (10) PLAN OF TERMINATION; REQUIRED PROVISIONS.--The plan
170 of termination must specify:

171 (a) The name, address, and powers of the termination
172 trustee.

173 (b) A date after which the plan of termination is void if
174 it has not been recorded.

175 (c) The interests of the respective unit owners in the
176 association property, common surplus, and other assets of the
177 association, which shall be the same as the respective interests
178 of the unit owners in the common elements immediately before the
179 termination, unless otherwise provided in the declaration.

180 (d) The interests of the respective unit owners in any
181 proceeds from any sale of the condominium property. The plan of
182 termination may apportion those proceeds pursuant to any of the
183 methods prescribed in subsection (12). If, pursuant to the plan
184 of termination, condominium property or real property owned by
185 the association is to be sold following termination, the plan
186 must provide for the sale and may establish any minimum sale
187 terms.

188 (e) Any interests of the respective unit owners in any
189 insurance proceeds or condemnation proceeds that are not used
190 for repair or reconstruction at the time of termination. Unless

HB 543

2006
CS

the declaration expressly addresses the distribution of
insurance proceeds or condemnation proceeds, the plan of
termination may apportion those proceeds pursuant to any of the
methods prescribed in subsection (12).

(11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
TERMINATION.--

(a) The plan of termination may provide that each unit
owner retains the exclusive right of possession to the portion
of the real estate that formerly constituted the unit, in which
case the plan must specify the conditions of possession.

(b) In the case of a conditional termination, the plan
must specify the conditions for termination. A conditional plan
will not vest title in the termination trustee until the plan
and a certificate executed by the association with the
formalities of a deed, confirming that the conditions in the
conditional plan have been satisfied or waived by the requisite
percentage of the voting interests, have been recorded.

(12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
PROPERTY.--

(a) Unless the declaration expressly provides for the
allocation of the proceeds of sale of condominium property, the
plan of termination must first apportion the proceeds between
the aggregate value of all units and the value of the common
elements, based on their respective fair-market values
immediately before the termination, as determined by one or more
independent appraisers selected by the association or
termination trustee.

HB 543

2006
CS

218 (b) The portion of proceeds allocated to the units shall
219 be further apportioned among the individual units. The
220 apportionment is deemed fair and reasonable if it is determined
221 by the unit owners approving the plan of termination by any of
222 the following methods:

223 1. The respective values of the units based on the fair-
224 market values of the units immediately before the termination,
225 as determined by one or more independent appraisers selected by
226 the association or termination trustee;

227 2. The respective values of the units based on the most
228 recent market value of the units before the termination, as
229 provided in the county property appraiser's records; or

230 3. The respective interests of the units in the common
231 elements specified in the declaration immediately before the
232 termination.

233 (c) The methods of apportionment in paragraph (b) do not
234 prohibit any other method of apportioning the proceeds of sale
235 allocated to the units agreed upon in the plan of termination.
236 The portion of the proceeds allocated to the common elements
237 shall be apportioned among the units based upon their respective
238 interests in the common elements as provided in the declaration.

239 (d) Liens that encumber a unit shall be transferred to the
240 proceeds of sale of the condominium property and the proceeds of
241 sale or other distribution of association property, common
242 surplus, or other association assets attributable to such unit
243 in their same priority. The proceeds of any sale of condominium
244 property pursuant to a plan of termination may not be deemed to
245 be common surplus or association property.

HB 543

2006
CS

246 (13) TERMINATION TRUSTEE.--The association shall serve as
247 termination trustee unless another person is appointed in the
248 plan of termination. If the association is unable, unwilling, or
249 fails to act as trustee, any unit owner may petition the court
250 to appoint a trustee. Upon recording or at a later date
251 specified in the plan, title to the condominium property vests
252 in the trustee. Unless prohibited by the plan, the termination
253 trustee shall be vested with the powers given to the board
254 pursuant to the declaration, bylaws, and subsection (7). If the
255 association is not the termination trustee, the trustee's powers
256 shall be coextensive with those of the association to the extent
257 not prohibited in the plan of termination or the order of
258 appointment. If the association is not the termination trustee,
259 the association shall transfer any association property to the
260 trustee. If the association is dissolved, the trustee shall also
261 have such other powers necessary to conclude the affairs of the
262 association.

263 (14) TITLE VESTED IN TERMINATION TRUSTEE.--If termination
264 is pursuant to a plan of termination under subsection (2) or
265 subsection (3), the unit owners' rights and title as tenants in
266 common in undivided interests in the condominium property vest
267 in the termination trustee when the plan is recorded or at a
268 later date specified in the plan. The unit owners thereafter
269 become the beneficiaries of the proceeds realized from the plan
270 of termination. The termination trustee may deal with the
271 condominium property or any interest therein if the plan confers
272 on the trustee the authority to protect, conserve, manage, sell,
273 or dispose of the condominium property. The trustee, on behalf

HB 543

2006
CS

274 of the unit owners, may contract for the sale of real property,
275 but the contract is not binding on the unit owners until the
276 plan is approved pursuant to subsection (2) or subsection (3).

277 (15) NOTICE.--

278 (a) Within 30 days after a plan of termination has been
279 recorded, the termination trustee shall deliver by certified
280 mail, return receipt requested, notice to all unit owners,
281 lienors of the condominium property, and lienors of all units at
282 their last known addresses that a plan of termination has been
283 recorded. The notice shall include the book and page number of
284 the public records in which the plan was recorded, notice that a
285 copy of the plan shall be furnished upon written request, and
286 notice that the unit owner or lienor has the right to contest
287 the fairness of the plan.

288 (b) The trustee, within 90 days after the effective date
289 of the plan, shall provide to the division a certified copy of
290 the recorded plan, the date the plan was recorded, and the
291 county, book, and page number of the public records in which the
292 plan was recorded.

293 (16) RIGHT TO CONTEST.--A unit owner or lienor may contest
294 a plan of termination by initiating a summary procedure pursuant
295 to s. 51.011 within 90 days after the date the plan is recorded.
296 A unit owner or lienor who does not contest the plan within such
297 90-day period is barred from asserting or prosecuting a claim
298 against the association, the termination trustee, any unit
299 owner, or any successor in interest to the condominium property.
300 In an action contesting a plan of termination, the person
301 contesting the plan has the burden of pleading and proving that

HB 543

2006
CS

302 the apportionment of the proceeds from the sale among the unit
303 owners was not fair and reasonable. The apportionment of sale
304 proceeds is presumed fair and reasonable if it was determined
305 pursuant to the methods prescribed in subsection (12). The court
306 shall adjudge the rights and interests of the parties and order
307 the plan of termination to be implemented if it is fair and
308 reasonable. The court shall void a plan that is determined not
309 to be fair and reasonable. In such action, the prevailing party
310 may recover reasonable attorney's fees and costs.

311 (17) DISTRIBUTION.--

312 (a) Following termination of the condominium, the
313 condominium property, association property, common surplus, and
314 other assets of the association shall be held by the termination
315 trustee, as trustee for unit owners and holders of liens on the
316 units, in their order of priority.

317 (b) Not less than 30 days prior to the first distribution,
318 the termination trustee shall deliver by certified mail, return
319 receipt requested, a notice of the estimated distribution to all
320 unit owners, lienors of the condominium property, and lienors of
321 each unit at their last known addresses stating a good-faith
322 estimate of the amount of the distributions to each class and
323 the procedures and deadline for notifying the termination
324 trustee of any objections to the amount. The deadline must be at
325 least 15 days after the date the notice was mailed. The notice
326 may be sent with or after the notice required by subsection
327 (15). If a unit owner or lienor files a timely objection with
328 the termination trustee, the trustee does not have to distribute
329 the funds and property allocated to the respective unit owner or

HB 543

2006
CS

330 lienor until the trustee has had a reasonable time to determine
331 the validity of the adverse claim. In the alternative, the
332 trustee may interplead the unit owner, lienor, and any other
333 person claiming an interest in the unit and deposit the funds
334 allocated to the unit in the court registry, at which time the
335 condominium property, association property, common surplus, and
336 other assets of the association are free of all claims and liens
337 of the parties to the suit. In an interpleader action, the
338 trustee and prevailing party may recover reasonable attorney's
339 fees and costs and court costs.

340 (c) The proceeds of any sale of condominium property or
341 association property and any remaining condominium property or
342 association property, common surplus, and other assets shall be
343 distributed in the following priority:

344 1. To pay the costs of implementing the plan of
345 termination, including demolition, removal, and disposal fees,
346 termination trustee's fees and costs, accounting fees and costs,
347 and attorney's fees and costs.

348 2. To lienholders of liens recorded prior to the recording
349 of the declaration.

350 3. To lienholders of liens of the association which have
351 been consented to under s. 718.121(1).

352 4. To creditors of the association, as their interests
353 appear.

354 5. To unit owners, the proceeds of any sale of condominium
355 property subject to satisfaction of liens on each unit in their
356 order of priority, in shares specified in the plan of
357 termination, unless objected to by a unit owner or lienor.

HB 543

2006
CS

358 6. To unit owners, the remaining condominium property,
359 subject to satisfaction of liens on each unit in their order of
360 priority, in shares specified in the plan of termination, unless
361 objected to by a unit owner or a lienor as provided in paragraph
362 (b).

363 7. To unit owners, the proceeds of any sale of association
364 property, the remaining association property, common surplus,
365 and other assets of the association, subject to satisfaction of
366 liens on each unit in their order of priority, in shares
367 specified in the plan of termination, unless objected to by a
368 unit owner or a lienor as provided in paragraph (b).

369 (d) After determining that all known debts and liabilities
370 of an association in the process of termination have been paid
371 or adequately provided for, the termination trustee shall
372 distribute the remaining assets pursuant to the plan of
373 termination. If the termination is by court proceeding or
374 subject to court supervision, the distribution may not be made
375 until any period for the presentation of claims ordered by the
376 court has elapsed.

377 (e) Assets held by an association upon a valid condition
378 requiring return, transfer, or conveyance, which condition has
379 occurred or will occur, shall be returned, transferred, or
380 conveyed in accordance with the condition. The remaining
381 association assets shall be distributed pursuant to paragraph
382 (c).

383 (f) Distribution may be made in money, property, or
384 securities and in installments or as a lump sum, if it can be
385 done fairly and ratably and in conformity with the plan of

HB 543

2006
CS

386 termination. Distribution shall be made as soon as is reasonably
387 consistent with the beneficial liquidation of the assets.

388 (18) ASSOCIATION STATUS.--The termination of a condominium
389 does not change the corporate status of the association that
390 operated the condominium property. The association continues to
391 exist to conclude its affairs, prosecute and defend actions by
392 or against it, collect and discharge obligations, dispose of and
393 convey its property, and collect and divide its assets, but not
394 to act except as necessary to conclude its affairs.

395 (19) CREATION OF ANOTHER CONDOMINIUM.--The termination of
396 a condominium does not bar the creation, by the termination
397 trustee, of another condominium affecting any portion of the
398 same property.

399 (20) EXCLUSION.--This section does not apply to the
400 termination of a condominium incident to a merger of that
401 condominium with one or more other condominiums under s.
402 718.110(7).

403 Section 2. This act shall take effect July 1, 2006.

SB 1270 - Relating to Advisory Council on Condominiums - 2006**Sponsor(s)**

by Margolis

Summary

General Advisory Council on Condominiums; requires that council review certain provisions re protections for purchasers of condominium conversions; requires report to Legislature. EFFECTIVE DATE: Upon becoming law.

Actions

Date	Chamber	Action
01/06/06	SENATE	Filed
01/31/06	SENATE	Referred to Regulated Industries; Judiciary
02/07/06	SENATE	On Committee agenda - Regulated Industries, 02/14/06, 2:00pm, 110-S

Bill Text and Filed Amendments**S 1270**

01/06/06

No amendments to this bill text.

Staff Analysis

No analysis of this bill.

Vote History

No vote history for this bill.

Related Documents

No related documents.

Statute Citations

There are no statute citations.

Codes and Comments

Condominiums	Priority/Importance/Position
--------------	------------------------------

 **Edit Comments**

Not top priority / Importance not specified / Position not specified

Analyst Comments

You have no analyst comments to this bill.

Generated on 02/08/06

By Senator Margolis

35-859A-06

1 A bill to be entitled
2 An act relating to the Advisory Council on
3 Condominiums; requiring that council review
4 certain provisions related to protections for
5 purchasers of condominium conversions;
6 requiring a report to the Legislature;
7 providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. (1) The Advisory Council on Condominiums,
12 created by s. 718.50151, Florida Statutes, shall review part
13 VI of chapter 718, Florida Statutes, concerning condominium
14 conversions, and shall submit a report to the Legislature by
15 November 30, 2006, which evaluates whether such provisions
16 provide adequate postpurchase protection for purchasers of
17 condominium conversion properties and recommends any proposed
18 legislation needed to improve the protection provided by part
19 VI of chapter 718, Florida Statutes.
20 (2) The report must examine the existing provisions,
21 particularly ss. 718.616 and 718.618, Florida Statutes, as
22 they relate to the following issues:
23 (a) Whether the disclosures required by s. 718.616,
24 Florida Statutes, provide adequate information to the
25 purchaser; whether more specific guidelines regarding the
26 contents of such reports should be established; and whether
27 the creation of privity or potential liability between persons
28 who certify such disclosure reports and the unit owners should
29 be addressed; and
30 (b) Whether the provisions of s. 718.618, Florida
31 Statutes, which require developers to fund reserve accounts or

1 alternatives to such accounts, are adequate or should be
2 modified.

3 Section 2. This act shall take effect upon becoming a
4 law.

5

6

7

SENATE SUMMARY

8

9

Requires the Advisory Council on Condominiums to review
certain statutes related to protections for purchasers of
condominium conversions and submit a report to the
Legislature.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

**CITY ATTORNEY'S MEMORANDUM DATED
JANUARY 23, 2006; #4 (URGE THE
LEGISLATURE TO STRENGTHEN THE CONDO
ACT) ITEMS (A) – (F)**

**I
T
E
M

F
O
U
R**


**CITY ATTORNEY'S MEMORANDUM DATED
JANUARY 23, 2006; #4 (URGE THE
LEGISLATURE TO STRENGTHEN THE CONDO
ACT) ITEMS (A) – (F)**


**I
T
E
M
F
I
V
E**

**CITY OF MIAMI BEACH
OFFICE OF THE CITY ATTORNEY**

MEMORANDUM

TO: Mayor David Dermer
Members of the City Commission
Jorge Gonzalez, City Manager

FROM: Murray H. Dublin 
City Attorney

Debora J. Turner 
First Assistant City Attorney

SUBJECT: **The Jurisdiction of Local Governments under the Florida Condominium Act**

DATE: January 23, 2006

Pursuant to the request of Mayor David Dermer at the December 7, 2005 Commission meeting, the following memorandum was prepared to address questions concerning the jurisdiction of the City to enact reforms in the area of condominium conversions. Section A provides a general legal analysis of applicable preemption and conflict issues, Section B addresses the specific limitations of local governments under the Florida Condominium Act, and Section C proposes possible solutions given the limited parameters of local government action in this area.

A. IN GENERAL: PREEMPTION AND CONFLICT ISSUES

Legislation may be enacted concurrently by both state and local governments in areas not preempted, either expressly or implied, by the state, and as long as the local concurrent legislation does not conflict with state law. City of Miami Beach v. Rocio Corp., 404 So. 2d 1066, 1070 (Fla. 3rd DCA 1981)¹. Preemption by the state need not be explicit, so long as it is

¹ In Rocio, the Third District, interpreting the 1979 Florida Condominium Act, which pre-dated the Roth Act (Part IV of Chapter 718 entitled "Conversions to Condominium"), found that although the 1979 version of the Act did not expressly, or by implication, preempt the subject of condominium conversion to state government, a City of Miami Beach ordinance conflicted with state law because conduct permitted by the State was not allowed by the City ordinance via the imposition of a supplementary burden (i.e., a 90 day moratorium on conversions). Therefore, the City's ordinance was enjoined from enforcement. Subsequently, the State Legislature addressed the problem when it enacted the Roth Act. That Act gave counties the authority to enact legislation to provide for lease extensions when shortages in rental units were due to condominium conversions. Both Dade and Broward Counties enacted such limited legislation in 1980. See § 17-01, Miami-Dade County Code; §§ 5-299 thru 5-301, Broward County Code.

clear that the legislature has clearly preempted local regulation of the subject.” City of Miami v. Wellman, 875 So. 2d 635, 640. (Fla. 3d DCA 2004). For example, courts may “imply” preemption when “the legislative scheme is so pervasive as to evidence an intent to preempt the particular area and where strong public policy reasons exist for finding an area to be preempted by the Legislature.” Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc., 681 So. 2d 826, 831 (Fla. 1st DCA 1996) (citing Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984)).² Moreover, preemption may not completely bar a local government from regulating on a subject, but may exist only as to narrow topics within a broader topic of a state law. See Phantom of Clearwater v. Pinellas County, 894 So. 2d 1011, 1019-1021 (Fla. 1st DCA 2005) (although county was not preempted entirely from legislating in area of fireworks, some aspects of state law arguably preempted county and certain penalty provisions of county ordinance were found to be in conflict with state law).

B. THE FLORIDA CONDOMINIUM ACT LIMITS LOCAL GOVERNMENT REGULATION

Under the current version of Florida Condominium Act contained in Chapter 718 of the Florida Statutes, extensive and comprehensive regulations for condominiums and conversions are provided. Although not entirely preempting local regulations in this area, the Act only authorizes local government to act in certain limited areas. For example, Section 718.606(6) allows counties to enact legislation to extend rental agreements where there is a “grave housing emergency;” Section 718.507 provides that local building and zoning laws must not discriminate as to the condominium form of ownership and must apply equally to all buildings and improvements of the same kind;³ and Section 718.616(4) requires a developer to file, with its disclosure, a letter issued by a municipality which acknowledges compliance with the applicable zoning requirements. The Act does not specifically authorize local governments to enact legislation which would be more restrictive than the State’s requirements.⁴ Moreover, in 1998, the Florida Legislature enacted Section 718.621 which specifically authorized the Division of Florida Land Sales, Condominiums, and Mobile Homes (the “Division”) to promulgate rules

² “If there is any doubt as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute.” Wellman, 875 So. 2d at 640 (citing Rocio, 404 So. 2d at 1069 (Fla. 3d DCA 1981)).

³ See Lifter v. Metropolitan Dade County, 482 So. 2d 479 (Fla. 3d DCA 1986) (county zoning ordinance requiring notice from subdividers of hotels and motels of continued compliance with density and parking requirements did not conflict with Condominium Act).

⁴ Examples of state laws that have expressly allowed local government to enact more restrictive laws include Section 553.73(4)(b) of the Florida Building Code which authorizes local governments to adopt “more stringent” technical provisions “than those specified in the Florida Building Code.” See also GLA and Assoc.s, Inc. v. City of Boca Raton, 855 So. 2d 278 (Fla. 4th DCA 2003) (city ordinance providing stricter setback requirements not preempted by state Shore Preservation Act where Act expressly authorized municipalities to impose setback requirements “equal to, or more strict than” the Act).

concerning condominium conversions.

For all of the foregoing reasons, local governments are limited in their ability to regulate condominium conversions and may be precluded from adopting legislation that would impose stricter condominium conversion requirements.⁵ Moreover, regardless of the extent to which local governments may be preempted under the Condominium Act, local regulations concerning condominium conversion requirements cannot be adopted that would conflict with state law. See Pinellas County; Rocio.

In view of the foregoing, the following local solutions may be explored to address concerns with regard to condominium conversions and to provide additional safeguards to the public

C. PROPOSED SOLUTIONS TO CONDOMINIUM CONVERSION CONCERNS

1. Adopt Stricter Building Code Requirements

Amendments to the City Code could be considered that would apply evenly to all buildings on Miami Beach. The building recertification process for historic buildings is currently going through the Committee process. This proposal would require all buildings older than 40 years to be recertified every 5 years.

2. Expand Content of Municipal "Zoning Letter"

Rudolph Prinz, Bureau Chief for the Standards and Registration Division of the Department of Business and Professional Regulation, has suggested that a zoning "letter," required to be issued by a municipality pursuant to Section 718.616(4), Fla. Stat., can provide other information, in addition to that regarding "compliance with applicable zoning requirements". In such zoning "letter," a municipality can notify the State of any problems or special consideration which should be given to a particular conversion application because the condition of the building may not be fully or accurately reflected in the architect or engineer's report. As explained by Mr. Prinz, a municipality's "zoning letter" may be used, and has been used, as an opportunity to advise the State of concerns which can then be addressed at the State level and which could trigger the State to require "other" information pursuant to Section 718.502(5), Fla. Stat., in the developer's offering statement. Specifically, Section 718.502(5) states that "[i]n addition to those disclosures described by s.s. 718.503 and 718.504, the Division is authorized to require such other disclosure as deemed necessary to fully or fairly disclose all aspects of the offering."

⁵ The General Counsel for the Department of Business and Professional Regulation, concurs with our concern relative to the adoption of legislation that would impose stricter restrictions on condominium conversions as such may be preempted by, or conflict with, state law.

3. Public Education and Notification

The City's communication with Condominium residents can be expanded with regard to City-issued code violations. Efforts could include, community workshops, improved website communications, and visible posting of condominium violations.

4. Urge the Legislature to Strengthen the Condominium Act

A local government can lobby its legislators to make specific changes to Chapter 718. For example, disclosure requirements could be strengthened by the State to address concerns that: a) sufficient information is not currently provided on the report required under Section 718.616; b) the report that is submitted should go through a more thorough analysis or review when received by the State; c) condominium documents should be required to reflect restrictions on unit sizes and uses; require that all purchasers have this disclosed to them in writing and that they execute an acknowledgement to such restrictions; d) disclosure be provided in writing by realtors, registered agents, and/or other professionals involved in marketing and selling hotel/condominium units to prospective purchasers of any and all restrictions and code violations; e) encourage the State to create the statutory provisions to allow conduit financing through counties and municipalities to provide for interest free loans to condominiums to correct significant building, fire, and/or life safety violations at no risk to the participating local government (similar to Industrial Revenue Bonds); and f) encourage the State to create a grant program to partially offset the costs of building, fire, and life-safety related significant renovations for older structures.

5. Amend the City's Occupational License Code Provisions

Provisions could be considered that would require condominium associations, at license renewal, to provide confirmation that all unit owners have been provided notice of all code violations in the building's common areas.

6. Modify the City's Lien Search and Violation Search Request Forms

These forms could be modified to encourage the requestor to seek information on common areas in a building in addition to a prospective unit. (This has already been implemented).

7. Create a Community-Based Task Force

A task force could discuss the foregoing ideas and/or generate additional ideas to recommend to the City Commission. (A Commission Task Force has already been created).

ORAL REPORT BY THE CITY ATTORNEY'S OFFICE REGARDING CONFLICTS OF INTEREST

I
T
E
M

S

I

X

GUEST SPEAKER

I
T
E
M

S
E
V
E
N